TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 159.

THE STATE OF MINNESOTA, APPELLANT,

vs.

C. N. BRUNDAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 26, 1900.

(17,571.)

SUP

T

APPEAL FR

Caption .....
Petition for w
Exhibit A

Order that wri
Writ of *habeas*
Order postpon
Return to wri

Jump

(17,571.)

PREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 159.

THE STATE OF MINNESOTA, APPELLANT,

vs.

C. N. BRUNDAGE.

L FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

INDEX.

	Original.	Print.
	1	1
for writ of *habeas corpus*	2	1
ibit A—Proceedings at the trial	7	4
Testimony of Wm. C. Corbett	7	4
W. W. P. McConnell	14	9
Levi Longfellow	15	10
J. A. Hummel	17	12
W. W. P. McConnell	21	15
Benjamin D. White	28	21
C. N. Brundage	34	25
Wm. B. Russell	40	30
W. N. Irish	43	32
J. L. Crump	48	36
W. B. Russell (recalled)	49	36
C. W. Drew	50	37
at writ of *habeas corpus* issue	57	42
habeas corpus	59	43
stponing hearing, &c.	61	43
o writ of *habeas corpus*	63	44

FDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 27, 1900.

	Original	Print
Exhibit A—Complaint	65	45
B—Warrant	66	46
Order continuing hearing	69	47
Order continuing hearing	71	48
Order continuing hearing	73	48
Order taking cause under advisement	75	49
Opinion	77	49
Judgment	90	56
Assignment of errors	92	57
Petition for appeal	94	58
Order allowing appeal	96	59
Bond on appeal	97	59
Citation and service	100	61
Clerk's certificate	102	61

1 UNITED STATES OF AMERICA:

In the Matter of the Petition of C. N. BRUNDAGE for a Writ of *Habeas Corpus.*

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota for the September, A. D. 1899, term of said court, held in the city of Minneapolis, in said district, in the year of our Lord one thousand eight hundred and ninety-nine.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this twenty-first day of August, A. D. 1899, came the petitioner above named, by Mr. C. A. Severance, his attorney, and filed in this court his petition herein in words and figures as follows, to wit:

2 UNITED STATES OF AMERICA, }
District of Minnesota. }

In the United States Circuit Court, Eighth Judicial Circuit.

To the honorable the judges of said court:

Your petitioner, C. N. Brundage, represents that he is unlawfully restrained of his liberty by Harry M. Burke, lieutenant of police of the city of Minneapolis, with directions to deliver your petitioner to the keeper of the workhouse, which is the common jail of the city of Minneapolis, in the county of Hennepin and State of Minnesota, at the said city of Minneapolis, in said State. The pretended cause of restraint is as follows:

On the 22nd day of May, 1899, at the city of Minneapolis, in said county of Hennepin and State of Minnesota, one W. C. Corbett filed with the municipal court of said city of Minneapolis, which is the court having jurisdiction of offenses committed in said city, an affidavit and complaint in the words following, to wit:

"STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Municipal Court, City of Minneapolis.

William C. Corbett, being duly sworn, makes complaint to the above-named court and says that on the 22 day of May, A. D. 1899, at the city of Minneapolis, in said county of Hennepin, State of Minnesota, C. N. Brundage, then and there being, did wilfully, unlawfully, and wrongfully offer and expose for sale and have in his possession with intent to sell a quantity of a certain compound designed to take the place of butter, and made in part from animal and vegetable oils and fats not produced from milk or cream, said compound being an article commonly known as oleomargarine, and being then and there colored with a coloring matter whereby

the said article and compound was made to resemble butter, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

Wherefore complainant prays that said offender may be arrested and dealt with according to law.

WILLIAM C. CORBETT.

Sworn to and subscribed and complained of before me this 24th day of May, A. D. 1899.

HENRY N. LOHREN,
Deputy Clerk of the Municipal Court."

3 And thereupon a warrant was issued out of the said municipal court for the arrest of your petitioner, and the same was duly delivered to an officer of said city, county, and State to be executed; that pursuant to the command of said warrant said officer arrested your petitioner and brought him before said municipal court for trial upon the charge set out in said affidavit and complaint; that thereupon the said cause was from time to time adjourned, and the said trial was finally commenced on the 7th day of July, 1899, and completed on the 10th day of July, 1899, when said cause was taken under advisement by the said court.

That attached hereto, marked Exhibit "A," is a true and correct copy of all the proceedings had and testimony offered upon said trial, the contents of which said Exhibit "A" your petitioner begs leave to make part of this his said petition as fully as though herein set forth at length.

That the judge of said municipal court, having duly considered the said matter, did on the 31st day of July, 1899, adjudge your petitioner guilty of the alleged offense charged in said complaint, and that he pay a fine of twenty-five dollars, or in default thereof that he be committed for a period of thirty days and confined in said workhouse, which is the common jail of said city of Minneapolis, in said county and State, and that a stay of execution was had, which said stay expired this day.

Your petitioner further avers that he did not pay the said fine of twenty-five dollars so imposed upon him by said court, and that thereupon the said municipal court issued a writ of commitment to to said officer, Harry M. Burke, in which he, said Burke, was directed to deliver your petitioner to the keeper of said workhouse, which is such common jail, commanding said last-named officer to take and confine him, your petitioner, for the period of thirty days in said workhouse of said city of Minneapolis.

4 That by virtue of said mittimus the said Harry M. Burke seized the person of your petitioner, holds him in custody, and is about to confine him, your petitioner, in the workhouse aforesaid, in obedience to the command of said writ.

That the affidavit and complaint aforesaid charges your petitioner with the violation of a pretended act of the legislature of the State of Minnesota entitled "An act to prevent fraud in the sale of dairy products, their imitations or substitutes; to prohibit and pre-

vent the manufacture or sale of unhealthy or adulterated dairy products, and to preserve the public health," which said act was approved April 19, 1899.

Your petitioner further shows that at the time and place alleged in said affidavit and complaint and as more fully appears by the uncontradicted testimony fully set forth in said Exhibit "A," your petitioner offered for sale and actually sold a quantity of oleomargarine, to wit, a ten-pound package of the same, then and there intending the same for consumption as human food, in said county of Hennepin and State of Minnesota, which said oleomargarine was the ordinary, common oleomargarine of commerce and was manufactured in the State of Indiana and therefrom carried as an original package to said county of Hennepin and State of Minnesota, and in all respects was fit for human food.

Your petitioner further shows that said oleomargarine, after being so manufactured in said State of Indiana, was sold in said State to the Hammond Packing Company, a corporation of which your petitioner is the agent and manager at said Minneapolis, which said corporation is organized and existing under the laws of the State of Illinois and is a citizen of said State and engaged in the business of handling meat products and oleomargarine and butterine.

That the said package of oleomargarine was so shipped in an unbroken form — said Hammond Packing Company, in Indiana, to said Minneapolis, Minnesota, and was so sold to the said Corbett, the complainant, and was at all times until said sale to said Corbett, and after the time of its purchase by said Hammond Packing Company, an unbroken, original package, as fully appears by the said testimony contained in said Exhibit "A;" and your petitioner shows that his restraint and imprisonment aforesaid are unauthorized and illegal, because, first, the said act of the legislature of the State of Minnesota is in violation of article I, section 8, of the Constitution of the United States, which provides that "the Congress shall have power to regulate commerce among the several States;" 2nd,

That said act of the legislature of the State of Minnesota is a violation of section II, article 4, of the Constitution of the United States, which provides that "the citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several States;" 3rd,

That said act of the legislature of the State of Minnesota is in violation of section I, article 14, of the Constitution of the United States, providing that "no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws;" 4th,

The act aforesaid being in conflict with the provisions of the Constitution of the United States is void, and said municipal court was without jurisdiction in the cause aforesaid.

Therefore your petitioner asks that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

C. N. BRUNDAGE.

6 STATE OF MINNESOTA, } ss:
County of Hennepin, }

C. N. Brundage, being duly sworn, upon oath says that he is the petitioner in the above and foregoing petition, and that the matters and things therein set forth are true in substance and fact.

C. N. BRUNDAGE.

Subscribed and sworn to before me this 21st day of August, A. D. 1899.

P. S. NEILSON,
[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minnesota.*

7 EXHIBIT "A."

STATE OF MINNESOTA, }
County of Hennepin. }

Municipal Court, City of Minneapolis.

STATE OF MINNESOTA }
vs.
C. N. BRUNDAGE, Defendant. }

The above-entitled cause came on for trial and was tried on the 7th and 10th days of July, A. D. 1899, before Hon. Andrew Holt, judge of said court, without a jury, Messrs. H. D. Dickinson and Charles W. Somerby appearing for the State and Messrs. Davis, Kellogg & Severance appearing for the defendant, when the following proceedings were had:

WILLIAM C. CORBETT, after being first duly sworn, testified:

By Mr. DICKINSON:

Q. Mr. Corbett, do you know Mr. Brundage, the defendant?
A. Yes, sir; I do know him.
Q. What is your business, Mr. Corbett?
A. I am connected with the State dairy and food department as an inspector.
Q. In this State?
A. In this State; yes, sir.
Q. On the 22d day of May last, here in the city of Minneapolis, Hennepin county, Minnesota, did you purchase from Mr. Brundage an article known as oleomargarine?

Mr. SEVERANCE: I object to that as incompetent, irrelevant, and immaterial, for the reason that the pretended law under which this complaint was made is unconstitutional and void, being a contravention of the Constitution of the United States.

The COURT: Do you wish to argue the matter?

Mr. SEVERANCE: Not now; no.

8 The COURT: Objection overruled.

Mr. SEVERANCE: Exception.

A. Yes, sir; I did.

Q. At what place in the city was the purchase made?

Mr. SEVERANCE: May it be understood that all this testimony be received subject to my objection and exception?

The COURT: Yes.

A. Near Seventh street and Third avenue north.

Q. In what kind of a place?

A. In a place of business there where meats and lard and oleomargarine was sold.

Q. State the transaction that took place at that time between you and Mr. Brundage, the defendant.

A. At that date, accompanied with Mr. McConnell, we went up to the place of business known as the Hammond Packing Company's, and I inquired if they had some oleomargarine in stock. They told me they had. I asked for the manager of the place, and Mr. Brundage came out and told me he was the manager. I told him we wanted to purchase some oleomargarine. He instructed one of the men in the house to bring some out of the back part of the store, and he brought a package forward and opened it up, which contained ten pounds of presumably oleomargarine, put up in one-pound prints, stamped with a design of a wheat sheaf, gold and yellow in color, resembling creamery butter. I asked him the price. He told me fourteen cents a pound. I told him I would take a bill for it and paid him, and he took a registry where I lived, which I gave him, and at that time, not knowing his name, asked him his name, so that I might have the data to use afterwards.

Q. Was it a package which was opened that you purchased?

A. The package was opened by the man who brought it from the room. Whether it was opened before or not I don't know. It was a ten-pound wooden box——

Q. When you saw it was it opened?

A. When I saw it first I think the man had it in his hand, 9 and he brought it out and opened it with an opener.

Mr. SEVERANCE: It wasn't open when you first saw it?

A. No; but whether it had been opened before or not I don't know.

Q. What I want to know is, was the package broken in your presence?

A. Yes, sir; it was opened in my presence.

Q. In what way was it sealed or closed?

A. With nails only, so far as I noticed or observed.

Q. A box?

A. A wooden box.

Q. Were the nails drawn from it?

A. He used, I think, what we call a box-opener to just pry the cover off from the box.

Q. So that the cover of the box was entirely taken off?

A. Yes, intact.

Q. Was any of it taken out at that time?

A. I took it out and examined it to see the characteristics of it.

It was wrapped or put up in a tissue paper, each print; I unrolled that so as to see the character and color of the oleomargarine.

Q. Did you handle more than one of the prints?

A. I think two. I think I took out one and opened it, and then another; handed it to Mr. McConnell, who was with me. That I won't be clear about, but that is my impression.

Q. Then you replaced it?

A. Put it back into the box and closed the box up.

Q. You took the box away with you?

A. Yes, down to Sixth street, and stepped into Mr. Longfellow Brothers' store.

Q. Who was with you at the time you took it away?

A. Mr. McConnell.

Q. How much did you pay for it?

A. Fourteen cents a pound; $1.40 for the package.

Q. What was the color of the article purchased by you as compared with natural color?

A. It was a golden yellow; resembled and bore every appearance of a package of creamery butter or fine dairy butter.

Mr. SEVERANCE: I move to strike out the latter part of that answer as not responsive.

The COURT: Motion denied.

Exception taken by defendant.

Q. Did Mr. McConnell go with you to the place where you took this package?

A. Yes, sir.

Q. What was done with it then?

A. I took it from there and took it down to Mr. Longfellow's store and opened it in his store and showed Mr. Longfellow——

Mr. SEVERANCE: I object to that.

The COURT: Just state what you did with it.

A. Well, I took it there and from there I took it to the office at 424 Guaranty Loan building, where it was given into the custody of Mr. McConnell, who took it from there to St. Paul.

Q. Did you see it afterwards?

A. Yes, sir; I saw the package in St. Paul just as I have seen it here.

Q. You saw it afterwards at the State chemist's?

A. Yes, sir.

Q. What did you see down there, anything after that?

A. There was nothing done with the package after that.

Q. Did you see it examined at all?

A. I didn't see it examined at the State chemist's. I saw the package there and took one of the bricks out and brought it up here again for the purpose of having it examined by one of the chemists here.

Q. Who did you bring it to here?

A. Doctor Drew.

Q. And when did you leave that with him?
A. I think it was on Wednesday that I left it with Doctor Drew.
Q. Were these pound prints marked in any way?
A. No, sir——

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.
Exception taken by defendant.

Q. The prints—was there anything on the prints to indicate what they were?
11 A. The prints were not marked with letters in anything.
Q. Either the tissue in which they were wrapped or upon the oleomargarine itself?
A. Neither one.
Q. Not marked in any way?
A. They were marked with a stamp of a wheat sheaf on each print.
Q. That is, a form of a wheat sheaf?
A. Yes, sir; was on each print.
Q. Was there any other description you wish to give as to the condition of the oleomargarine?
A. Nothing, except the answer I would make to that, that it resembled butter in appearance and in color.

Cross-examination.

By Mr. SEVERANCE:

Q. Mr. Corbett, butter is of a good many different shades, is it not?
A. Why, it possibly admits of an answer, yes, sir.
Q. You would have to say "Yes," in order to tell the truth, wouldn't you? There are a good many different shades of butter, is there not?
A. There is no blue butter that I ever saw——
Q. Just answer the question. I say there are many different shades of butter, are there not? I don't say butter is made of every shade in the world, but there are many different shades of butter. Isn't that true?
A. Well, I would like to——
Q. Answer the question.
A. If two is many, I would say yes, sir.
Q. Then, do you mean to say, Mr. Corbett, that there are only two shades of butter?
A. I didn't say that; there are several distinct colors. Now, many colors would mean a majority in that sense of the word; there are a good many shades of yellow——
Q. I didn't say different colors. I said shades.
A. Shades of colors?
Q. There is butter that is almost white?
A. Yes, sir.

12 Q. And butter with a little tinge of yellow?
A. Yes, sir.
Q. And other butter with a greater tinge of yellow?
A. Yes, sir.
Q. And so on until you get to butter that is very yellow?
A. Yes, sir; I can answer that intelligently, but there are not many shades.
Q. Now, Mr. Corbett, this oleomargarine that you saw was about the color of what you call yellow creamery butter, wasn't it?
A. Yes, sir.
Q. It wasn't the color of white or light colored butter, was it?
A. No, sir.
Q. It was the color of one shade of butter only; I mean it was the same shade of one shade of butter?
A. Why, it would only have one shade of color.
Q. And it differed in color or shade from all other shades of butter, didn't it?
A. Possibly true.
Q. Now, when you went there to the establishment of the Hammond Packing Company you didn't ask for butter, did you?
A. No, sir.
Q. You asked for oleomargarine?
A. Yes, sir.
Q. And this package which, so far as you know, had never been broken up to that time was brought out by one of the men and there opened by him?
A. Yes, sir.
Q. That package had on it the Government stamp, did it not?
A. The internal-revenue stamp; yes, sir.
Q. That is what I mean.
A. Yes, sir.
Q. And when you bought this oleomargarine you say that Mr. Brundage, who represented himself to you as the manager, took your name and address?
A. Yes, sir.
Q. Made out a little slip, didn't he, showing the sale?
A. I presume so.
Q. Have you that box with you?
A. Yes, sir; the box is here.
Q. Bring it in and let's look at it.
A. That is it.
13 Q. Exhibit A is shown witness. Is Exhibit A the box in which this oleomargarine was contained and which you so purchased?
A. Yes, sir.
Q. At the time you purchased it were these words, "The G. H. Hammond Company's Calumet oleomargarine factory No. 16, sixth district of Indiana," stamped on the box?
A. It was.
Q. And the letters 13–3–10 stamped on the box?
A. Yes, sir.

Q. At that time was the United States internal-revenue oleomargarine stamp, being a stamp for a ten-pound package, on the box?
A. I presume so, but I didn't look to see what it was marked, but I have no doubt but what it was there.
Q. Was the stamp, "Form 219. Factory No. 16, 6th district, State of Indiana. Notice.—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases"—was that on the box at the time?

Mr. SOMERBY: Objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.
Exception taken by the State.

A. I presume it was. I didn't notice that because I had no particular reason for noticing it.
Q. Was the stamp destroyed?
A. I don't know.
Q. You didn't put the stamp on, did you?
A. No, sir.
Q. The box was nailed up as it is now nailed here in court or practically so?
A. It was nailed when he brought it into the room.
Q. You took it away, and it was nailed up?
A. He did or I did; I don't know which.
Q. Before you took it away?
A. Yes, sir.
Q. It was nailed up practically as it is now—the top was nailed?
A. Nailed onto the box again; yes.

14 Mr. SEVERANCE: I will offer in evidence this box—Exhibit A—simply the box.
The COURT: Received.

W. W. P. MCCONNELL, after being first duly sworn, testified:

By Mr. DICKINSON:

Q. Mr. McConnell, were you with Mr. Corbett at the time he purchased Exhibit A, with its contents?
A. Yes, sir.
Q. Of Mr. Brundage, at the place testified to by Mr. Corbett?
A. Yes, sir.
Q. Here in this city, Hennepin county, Minnesota?
A. Yes.
Q. You may state the circumstances of the purchase.
A. I accompanied Mr. Corbett up to the Hammond Packing Company's; we went in and inquired for the goods, and they brought the goods forth and stated the price——
Q. Well, state what was said.

A. We went in and inquired for oleomargarine; told him we wanted to buy some. Mr. Brundage sent one of the men after some and it was brought in; the cover was removed. We looked at it somewhat, and he paid him for the goods.

Q. Paid him the amount mentioned by him in his testimony, I presume?

A. Yes, sir.

Q. You examined the package after it was opened?

A. Yes, sir; I did.

Q. Describe the appearance of the butter so far as the color is concerned—oleomargarine, I mean.

A. I didn't get the question.

(Question read.)

A. Why, the color, I should say, was the color of Gilt Edge—of what is known as creamery extra.

Q. Well, what color is that?

A. Well, it is a yellow color.

Q. Well, is this one of the prints?

A. You just took it from the box, I should say yes.

Q. Is that the color it was at the time it was purchased?

A. Yes, sir; I think so.

Mr. DICKINSON: We offer this in evidence and will have it marked Exhibit B.

The COURT: Very well. Received.

Q. Mr. McConnell, what was done with the package at the time—did you go with Mr. Corbett?

A. I did; yes, sir.

Q. Did you see it at the State chemist's, St. Paul?

A. Oh, I carried the butter—we carried it to the office 424 Guaranty Loan, then I took charge of it and carried it to St. Paul and delivered it to the department chemist.

Mr. SEVERANCE: You both use the word "butter;" I suppose you mean oleomargarine?

Mr. DICKINSON: Yes; I want to get that right.

Mr. SEVERANCE: No cross-examination.

LEVI LONGFELLOW, after being first duly sworn, testified:

By Mr. DICKINSON:

Q. Mr. Longfellow, where is your place of business?

A. 208 North Sixth.

Q. Showing you Exhibit A, did you see that box with its contents of oleomargarine at the time mentioned by Mr. Corbett, when he brought it to your place?

A. Yes, sir.

Q. Did you examine it there?

A. Yes, sir.

Q. What is your business, Mr. Longfellow?

A. Wholesale produce, fruits.

Q. Handling butter?
A. Yes, sir.
Q. How long have you been handling that article?
A. Over thirty years.
Q. I will ask you if this oleomargarine at the time it was brought to your place by Mr. Corbett to be examined by you re-
16 sembled butter?
A. It speaks for itself—it certainly did.
Q. We want to get your answer to that.
A. It did; yes, sir.
Q. In what way?
A. In shape and color.
Q. Describe its color.
A. What I would call a golden straw color.
Q. And its color, as compared with creamery butter?
A. It would be difficult to distinguish in appearance. I might add also in flavor—that is, the odor—the shape, color, and odor.

Mr. SEVERANCE: I move to strike out that part of the answer in regard to shape and odor.
The COURT: I will let him describe the appearance of the butter. Motion denied.
Exception taken by defendant.
WITNESS: I intended that last additional answer to go with the first answer, to describe the article—shape, color, and odor or flavor.

Q. In all those respects it resembles what?
A. Creamery butter.

Cross-examination.

By Mr. SEVERANCE:

Q. Mr. Longfellow, you have been handling butter for thirty years, you say?
A. Yes, sir.
Q. You have handled a great deal of butter, and there is a good deal of butter put upon the market that is very different in color from this?
A. Oh, yes.
Q. Then what you mean, so far as oleomargarine, the color is concerned, is it resembles one kind of butter—creamery butter?
A. Yes, sir.
Q. Creamery butter is made with the use of coloring or extract, is it not?
A. I don't know; I never made any.

Mr. SOMERBY: That is objected to as immaterial and incompetent.
Mr. SEVERANCE: He says he don't know.

17 Q. Your only knowledge, then, of creamery butter is, then, after it is put upon the market?
A. Yes.
Q. You never made any?

A. No, sir; not at all.
Q. Never made any at all?
A. No, sir.
Q. You mean, then, that this oleomargarine resembles what has been handled by you as creamery butter?
A. Yes, sir.
Q. You have seen oleomargarine before, haven't you?
A. I do not know that I have seen it in a good many years; I think I saw oleo when it was first put upon the market.
Q. Not since?
A. No, sir.
Q. You don't know of your own knowledge whether this is the ordinary color of oleomargarine?
A. No; so far as the appearance is concerned, I should as soon take it for butter as anything else.
Q. You don't know of your own knowledge whether that is the ordinary color of oleomargarine?
A. No, sir.
Q. In fact, you don't handle oleomargarine and don't know anything about it?
A. No.

J. A. HUMMEL, after being first duly sworn, testified.

By Mr. DICKINSON:

Q. Mr. Hummel, you are State chemist?
A. I am assistant.
Q. Connected with the state department at St. Paul?
A. Yes.
Q. Have you examined in your capacity, official capacity, the oleomargarine in this case?
A. I did.
Q. Have you an analysis with you?
A. I have.
Q. Will you give us the result of your examination?

Mr. SEVERANCE: I object to that as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.
Exception taken by defendant.

18 A. The chemical examination of this material showed it to be oleomargarine; and the further tests that we made were to show the coloring matter, and it was found that it was colored with what is known as "butter yellow," which is a coal-tar product. That is as far as the chemical examination went.
Q. What is the effect of this coloring mixed with the compound or mixed with what is called oleomargarine?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.

Q. Well, what is butter yellow?

A. It is a coal-tar color or handled in dye.

Q. Do you know the natural color of oleomargarine without this yellow butter in it?

A. I have never seen any.

Q. How much of that did you find in this?

A. I didn't make a quantitative determination; simply the quality.

Q. I will ask you, if you know, what the effect of the use of butter yellow is upon being mixed with oleomargarine in its pure stage.

Mr. SEVERANCE: I object to that as incompetent, irrelevant, and immaterial.

The COURT: Objection sustained.

Mr. DICKINSON: Whether it would tend to make it a red or blue or other color?

The COURT: I thought the witness said he didn't know the color of oleomargarine in its natural state.

Q. State what is the effect on the oleomargarine with the use of butter yellow.

A. I stated it was pretty near that color.

Q. What color is it?

A. It comes with butter yellow—the same color.

Q. Does it make it a color resembling this ordinary butter?

A. Yes, sir.

19 Cross-examination.

By Mr. SEVERANCE:

Q. Mr. Hummel, you don't know the color of oleomargarine?

A. I have never seen any.

Q. You don't know whether oleomargarine is yellow, do you?

A. No, sir.

Q. You don't know?

A. No, sir.

Q. And this last question you answered about ordinary color, all you meant to say was it makes it the color of these bricks here in evidence?

A. Yes; before the oleomargarine is yellow it increases the color.

Q. So that it deepens—simply deepens the shade; that is your idea, is it?

A. Yes, sir.

Q. And the extent as to its being deepened depends upon that butter yellow that is used?

A. Yes, sir.

Q. What is the name of the manufacturers who make this butter yellow?

A. I couldn't say.

Q. Is it Wells and Richardson?

A. I don't know; possibly they make it.

Q. You know of that firm?

A. Yes; they sell a butter color. I have never examined it.
Q. You wouldn't undertake to say that isn't it?
A. No, sir.

Redirect examination.

By Mr. DICKINSON:

Q. As to color, what would be the effect of the use of this butter yellow on the oleomargarine that was more white than yellow?
A. It would give it a yellow shade.

By Mr. SOMERBY:

Q. What is the color of this coloring matter which went into this oleomargarine?
A. It is bright gold and yellow.
Q. Do you know what that is made of—what it consists of in its natural state?

20 Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection sustained.

Q. Is this butter yellow that you speak of known by any other name, as menthol orange? What is the chemical name of it?

Mr. SEVERANCE: Objected to as immaterial, incompetent, and irrelevant.

A. It is dimethyl-amido-azo-benzene.
Q. What did your analysis show as to these constituents which you examined? What does oleomargarine consist of?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.

Q. I will ask you if you can give the constituents of oleomargarine, combined as they are necessarily to make oleomargarine. Would you be able to tell from these constituents what the color of the product would be?
A. Will you state that again?
Q. Well, do you know the constituents of oleomargarine?
A. Yes, sir.
Q. What are they?

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial.

A. Oleomargarine is made of oleo oil, which is a soft oil from tallow and cotton-seed oil. Those are the principal constituents.
Q. Do you know the color of those constituents in their natural state? What is the color of the tallow that you speak of?
A. No, sir; I don't know.
Q. Do you know the color of tallow?
A. White with yellowish tinge.
Q. What is the color of cotton-seed oil?
A. In its pure state it is a yellowish tinge.

21 Recross-examination.

By Mr. SEVERANCE:

Q. Is there any other yellow substance in making oleomargarine except these two?
A. In this case there is.
Q. Don't they use yellow in cream, too, and milk?
A. Yes, sir; I suppose they do.
Q. But little yellow in cream and milk, isn't it?
A. I don't think so.
Q. There is a little butter in this, too, isn't there?
A. No, sir; not in this.
Q. Butter isn't a constituent part in the oleomargarine?
A. It is in some cases.
Q. There is cream in this, isn't there?
A. No, sir.
Q. How do you know?
A. By the analysis.
Q. Is there milk in it?
A. Yes, sir.
Q. Is there any milk in it?
A. Some milk; there isn't cream.

W. W. P. MCCONNELL recalled.

By Mr. SOMERBY:

Q. Have you had some experience in the manufacture of butter?
A. Some; yes, sir.
Q. How much?
A. I have been manufacturing for five or six years steadily.
Q. Do you know the color of butter in its natural state?
A. Why, yes, sir; in a general way.
Q. What is the color?
A. It is a yellow.
Q. A yellow?
A. Yes, sir.
Q. Is it a deep yellow or a light yellow?
A. I don't know what you would call a deep yellow or a light yellow.
Q. You are a butter man; you ought to know something about it.
A. Well, I should call it a bright straw color.
22 Q. As compared with this oleomargarine that we have here, is that a light-colored butter or a bright-colored butter?
A. I think that is as near as you can get of standard butter.
Q. Is that the deepest or the lightest or the medium color that comes in, for instance?
A. Standard would be as near a perfect butter as you could get at it.
Q. I am asking you whether that is a medium color.
A. That is what I am telling you.
Q. Butter in its natural state, what color is it?

A. I should say that is about right.
Q. What do you mean by that?
A. The natural color of butter. If it would be in order I would say that I brought a sample of my own manufactured butter without any coloring in and compared that with it.

Mr. SEVERANCE: I move to strike that out.
The COURT: It may be stricken out.

Q. Showing you this bottle, I will ask you as to the color; how the natural color of butter compares with that color.
A. It is much darker, deeper.
Q. Then, if that was pure oleomargarine, butter color would be a deeper yellow color?
A. Yes, sir.

Mr. SOMERBY: State offers in evidence a bottle of supposedly oleomargarine, representing the color of pure oleomargarine—Exhibit C.
Mr. SEVERANCE: I object to that as no foundation laid.
The COURT: Objection sustained.

Q. Well, then, what color would you call that in this bottle here?

Mr. SEVERANCE: That is objected to.
The COURT: Objection sustained.

Q. Well, you know the color white when you see it, don't you?
A. Ordinarily; yes, sir.
Q. Now, then, you know yellow when you see it, don't you?
23 A. Yes, sir.
Q. You know orange when you see it, don't you, the color of orange?
A. Yes, sir.
Q. Do you know the shades between orange and white?
A. I wouldn't want to say that I did; not all of them; no, sir.
Q. But you can tell when a color comes up from white to a deep orange?
A. I can tell a deep orange.
Q. The shades between those two points you would be able to distinguish, wouldn't you?
A. Well, I don't know.

Cross-examination.

By Mr. SEVERANCE:

Q. What season of the year do you make butter?
A. All the year round.
Q. Do you mean to say that butter in the winter, its natural state, is as dark as this oleomargarine in evidence?
A. Yes, sir.
Q. Have you ever seen any white butter in the winter?
A. Yes, sir.
Q. That isn't colored white, is it?

A. I should suppose not.

Q. That is its natural color—that is the natural color of this white butter, isn't it?

A. Speaking of white butter——

Q. You answer my question. You have seen a great deal of butter, natural butter, in the winter which is of a very much lighter color than that?

A. Yes, sir.

Q. You have made butter very much lighter than that?

A. I have not; no, sir.

Q. You have Jersey cows, have you?

A. Yes, sir.

Q. Butter made from ordinary cows in the winter isn't as light as that, is it?

A. I think butter that is not affected from feeding, the natural butter, would show the color of that.

Q. By "that" you mean this block of oleomargarine introduced in evidence, don't you?

A. Yes, sir.

24 Q. You have been about the dairy stores more or less, haven't you?

A. Yes, sir; somewhat.

Q. You have seen butters of very different shades in those store-, haven't you?

A. Yes, sir.

Q. You have seen butter almost as white as lard, on sale, haven't you?

A. Why, I——

Q. Have you seen it or not?

A. I don't know, sir, but what I have.

Q. You know you have seen butter almost as white as lard, on sale, haven't you, in the stores?

A. I believe I did answer the question, did I not?

Q. You didn't quite answer it.

A. I wanted to, and you objected——

Q. Just answer; have you or have you not?

A. I have seen lighter butter, and would like to explain in answer to that——

Q. You have seen it on sale in the stores?

A. I would like to be understood——

Q. You have seen butter on sale in the stores almost as light color as lard, have you not?

A. No.

Q. Have you ever seen butter as light-colored as the substance in this bottle?

A. I don't think I ever saw any that color.

Q. Have you ever seen any butter as light substance as this in this bottle?

A. Yes, sir.

Q. As near white as this?

A. Yes, sir.

Q. And have seen it on sale, haven't you—exposed for sale—in the store?

A. I think I have.

Q. This creamery butter you speak of is made the color of butter that is sold by the use of coloring matter, isn't it?

A. I don't know.

Q. Don't you know it is a fact that creamery men do color their butter?

A. I think the most of them do——

Mr. SOMERBY: I object to that as incompetent, irrelevant, and immaterial, and move that it be stricken out.

The COURT: Motion denied.

25 Q. The butter that you speak of as the yellow creamery butter, what you call perfect butter or standard butter, that is made by the use of coloring matter, isn't it?

A. Not always.

Q. Isn't it usually?

A. I don't know.

Q. It is sometimes?

A. I think so.

Q. So when you say this substance in evidence here resembles creamery butter, you mean it is made of butter and in that butter there are coloring matters of some kind?

A. I don't know.

Q. Doesn't this oleomargarine resemble butter made at creameries where they have used coloring matter in its manufacture?

A. I presume it does.

Redirect examination.

By Mr. SOMERBY:

Q. It also resembles butter in which no coloring matter is used, butter in its natural state?

A. Yes, sir; that is the explanation I wanted to make to explain the position exactly.

By Mr. DICKINSON:

Q. Coloring matter is used in the lighter-colored butters for the purpose of making them more yellow, isn't it?

Mr. SEVERANCE: That is objected to as immaterial.

The COURT: That is a matter of common knowledge.

Q. The purpose of making the lighter-colored butter more yellow is for the purpose of making ordinary butter good butter.

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial.

The COURT: Objection sustained.

Q. How long have you been an inspector of butter?

A. I was State inspector of creameries and inspected butter for about two years.

26 Q. Up to the present time?
A. Yes, sir.
Q. Continually handling butter?
A. Yes, sir.
Q. Acquainted with its manufacture in dairies and creameries?
A. Yes, sir.
Q. What is the natural color of pure creamery butter? That seems to have been brought into question here on cross-examination by counsel for the defendant.

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.
The COURT: Ask him how much he knows about the coloring matter that is used in these creameries.

Q. I will ask you this question: From your experience in the butter market and from your examination of dairies and creameries where butter is produced, is the lighter color to which you have testified on cross-examination the usual or unusual color of butter?

Mr. SEVERANCE: I object to that as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.
Exception taken by defendant.

A. Do you refer to butter that is colored or natural?
Q. Butter as you find it in creameries, dairies, and on the market—natural butter.
A. The butter that I find in the creameries?

Mr. DICKINSON: You don't understand the question.

(Former question read.)

—. I guess I am thick-headed. I did not get the point there now.

(Question again read.)
Mr. SEVERANCE: Same objection.
The COURT: Objection overruled.
Exception taken by defendant.

A. Usual.

27 Recross-examination.

By Mr. SEVERANCE:

Q. Now, Mr. McConnell, in the month of June butter is yellowish, isn't it?
A. Yes, sir; I think so.
Q. Take butter from a Jersey cow made in the month of June, where the cow is out in grass and nicely fed, the butter from it is a more pronounced yellow that this brick, isn't it?
A. Our butter is about half Jersey and about half from common cattle——

Mr. DICKINSON: Didn't you understand that question?

A. Yes, sir. I am trying to answer it intelligently.

(Question read.)

A. Well, I can speak from experience, and just what I was trying to explain—it is just as near that as I can possibly get it.

Q. Isn't it a matter of fact that from what you were about to explain is from your own experience?

A. Yes, sir.

Q. Now, as an expert, I ask you if butter made in the month of June from Jerseys—not others, but Jersey cows—where the cows are nicely pastured and fed, isn't it a deeper and more pronounced yellow than this brick in evidence?

A. I think it might be; I don't know.

Mr. SOMERBY: You don't know?

A. No, sir.

Mr. SEVERANCE: Just wait a minute, please. I am not through yet.

Q. Now, you have been around inspecting creameries, have you?

A. Yes, sir.

Q. Two years?

A. Yes.

Q. And you have seen a good deal of creamery butter, haven't you?

A. Yes, sir.

Q. That creamery butter is the same all the year round, isn't it, when it is turned out of the factory?

A. Yes, sir.

Q. And that butter is obtained by putting in coloring matter, isn't it?

A I don't know in all instances, but I know it is very often.

28 Q. The dairy—the small farmers who make butter for the market don't use these coloring extracts, do they, usually?

A. Some do and some don't.

Q. The most of them don't, do they?

A. I couldn't state as to that.

Q. You say some do and some don't?

A. Yes, sir.

Q. Those who don't, I suppose their butter varies from time to time?

A. We don't inspect private creameries, as a rule. I have seen butter more or less in the market. My own butter is from a private dairy and not a public creamery.

Q. Do you use coloring in your butter matter?

A. No, sir; I never do.

Q. It varies—the coloring varies differently at different seasons of the year?

A. I should say in June it is a brighter color; it is a good color.

Q. You usually make good butter, I presume?

A. Yes; I presume so.

BENJAMIN D. WHITE, after being first duly sworn, testified:

By Mr. SOMERBY:

Q. What is your business, Mr. White?
A. Assistant State dairy and food commissioner.
Q. How long have you been holding that position?
A. Since the first of January.
Q. Have you been a manufacturer of butter?
A. I have.
Q. How long?
A. About seventeen years.
Q. Manufactured it yourself?
A. Yes, sir.
Q. Where?
A. Both in this State and Iowa.
Q. From pure milk and cream?
A. Yes, sir.
Q. During that time you have dealt in considerable quantities of butter, have you?
A. Yes, sir.
29 Q. How much?
A. Sometimes, on an average, a thousand pounds a day.
Q. Working for yourself or some one else?
A. No, sir; some one else.
Q. Engaged in the actual manufacture of butter yourself?
A. Yes.
Q. Do you know the natural color of butter?
A. I think I do.
Q. What is it?
A. It is a light straw color.
Q. As compared with this sample of oleomargarine—how does it compare with this sample?
A. That is about a light straw color.
Q. You call that a light straw color?
A. Yes, sir.
Q. At different seasons of the year does the natural color of butter vary?
A. In localities.
Q. What do you mean by that?
A. Under certain conditions.
Q. Well, state the conditions and the localities.
A. The farther north I think the butter gets whiter in the winter time.
Q. That is your experience?
A. Yes, sir; and farther south it is nearer a uniform color.
Q. What does that uniform color approach?
A. Nearer a light straw color.
Q. You have made butter in this State of Minnesota?
A. Yes, sir.
Q. As well as in other States?
A. Yes, sir.

Q. And the natural color of butter you say resembles this package of oleomargarine?

Mr. SEVERANCE: Objected to as leading and a repetition.

The COURT: Objection sustained.

Q. Butter under certain conditions and at certain seasons of the year is a still lighter color than this sample?

A. I should say an abnormal butter would be.

Q. What do you mean by that?

Q. Butter that is spoiled or partly spoiled in the manufacture.

30 Q. Well, the natural normal color of butter would be this light straw color?

A. Yes, sir.

Q. And the abnormal butter would be what?

A. The light color—white color, and all other colors.

Q. What are the causes that produce that abnormal color?

A. It may be by improper manufacture or by improper feeding, or no feed at all. Where the dairy is carried on extensively, very little color or no color is necessary.

Q. Does the color in Minnesota differ from other States, in your experience?

A. Yes, sir.

Q. In what does it differ?

A. Some of it is whiter.

Q. How about June butter?

A. June butter would be a yellow butter.

Q. In its natural state?

A. Yes.

Cross-examination.

By Mr. SEVERANCE:

Q. You say that June butter is yellow. By that you mean it is darker in color than this straw color you spoke of?

A. Yes, sir.

Q. How is May butter? Is that as dark as June butter?

A. Not quite.

Q. But that is a more pronounced yellow than straw color, isn't it?

A. I think not.

Q. June butter is?

A. Yes.

Q. How about July?

A. About the same as June.

Q. How is August butter?

A. About the same.

Q. Same as June and July. How is September butter?

A. It varies under certain conditions.

Q. How is it, as a rule—about same as June?

A. Just about.

Q. How is October? Does it get to straw color again by that time?

A. Yes, sir.

31 Q. So there are about four months in the year where the butter is more yellow than what you denominate straw color?

A. Yes, sir.

Q. So that now, then, in the winter, say in December, January, and February, take those months together now as stock are ordinarily fed in this country—not fancy dairy—stock that is ordinarily fed, the natural butter made from milk and cattle so taken care of is considerably lighter than this sample of oleomargarine?

A. Not the butter I made last year.

Q. Answer the question.

A. I can only speak from my experience.

Q. Do you mean to say that winter butter with stock ordinarily cared for is the color of this oleomargarine in evidence here?

A. Ordinarily; yes, sir

Q. Where have you manufactured butter?

A. In the southern part of the State.

Q. What county?

A. Freeborn.

Q. How many years?

A. Six years.

Q. And during the last six years in Freeborn county, Minnesota, winter butter the product of ordinary cows ordinarily cared for is as much straw color, as you call it, as this sample of oleomargarine in evidence here?

A. I didn't say so.

Q. What did you say?

A. Not during the last six years.

Q. Does it vary in different years?

A. If I am permitted to explain.

Q. Does it vary in different years?

A. Yes, sir.

Q. Some years it is very much lighter than others?

A. Not exactly that.

Q. Is it lighter some years than others?

A. It is darker some years than others.

Q. How is it ordinarily, is it considerably lighter than this sample of oleomargarine that is in evidence?

A. Can I explain?

Q. Is it not ordinarily, ordinarily one year with another during those three months, a lighter color than this oleomargarine

32 in evidence?

A. Not with my experience.

Q. Is it some seasons?

A. It has been.

Q. During what year?

A. The first year or two I come to Minnesota it was lighter than it is now in the winter time.

Q. Do you mean to say that in the State of Minnesota at the present time natural butter, without any coloring, made from cows ordinarily cared for, is as yellow as this oleomargarine in evidence?

A. Yes, sir.

Q. In the winter?

A. You didn't say winter before.

Q. I said during those winter months.

A. Repeat that again, please.

Q. Do you mean to testify that the butter, manufactured without coloring from milk, made in January, December, and February, along there in the winter months, in the State of Minnesota, from cows cared for in the ordinary way—ordinary cows and not fancy herd—is as yellow as this sample of oleomargarine which is in evidence?

A. In my case——

The COURT: That is not the question. Answer the question.

A. I couldn't say as to ordinarily, because I haven't seen butter throughout the State.

The COURT: Then you aren't competent as an expert here at all.

Q. Where did you work—in a creamery?

A. Yes, sir.

Q. Where was that creamery located?

A. Albert Lea.

Q. Did you ever use coloring matter to make the butter yellow?

A. Sometimes.

Q. What do you do with it if butter is always as yellow as this?

A. I didn't say it is always as yellow.

Q. Have you colored butter during the last three or four years?

A. Not the last year.

Q. Did you prior to the last year?

A. Yes, sir.

Q. What did you do that for?

A. To make it the natural straw color.

33 Q. I thought you said it was the natural color in your experience down there without any coloring matter?

A. I didn't say the last six years; I said the last year.

Q. Then you had an exceptional year, did you, is that it?

A. I don't know it was an exceptional year.

Q. Would one year out of six be your idea of exceptional? Just answer that yes or no.

A. Qualifying that, I think——

Q. Just answer yes or no.

A. I don't know whether it would be or not.

Q. Is there any year except the last year where you didn't use coloring matter?

A. No, sir.

Q. You used coloring matter every year except the last year?

A. Yes, sir.

Q. How much did you color your butter—make it the color of this brick of oleomargarine or more than that?

A. It depended upon the market, some wanted it a light color and some darker.
Q. You would color it so as to suit the trade?
A. Yes, sir.
Q. Sometimes you would color it more than this, would you?
A. Yes, sir; give it an abnormal color.

Mr. SEVERANCE: I move to strike out the last part of the answer.
The COURT: Motion granted.

Q. After you had so colored it and made it more pronounced yellow than this, did you still consider it butter—sold it for butter, did you?
A. Yes, sir.
Q. Then they must have sent out a variegated lot of butters, ranging from a light cream yellow to a dark yellow?
A. Yes, sir.
Q. Depending upon the tastes of the public?
A. Yes, sir; sometimes.
Q. I suppose it depended upon your taste?
A. No, sir.
Q. Not at all?
A. No, sir.
34 Q. Did you feel that you were permitting a fraud on the public in coloring butter to make it a different color than it was naturally?
A. No, sir.

Redirect examination.

By Mr. DICKINSON:

Q. How many markets did you supply?
A. Sometimes shipped to one and sometimes another.
Q. What markets did you ship to?
A. To St. Louis and New York.
Q. How about the Minnesota market?
A. We never shipped to Minnesota market except small quantities.
Q. What color would you ship to Minnesota?

Mr. SEVERANCE: I object to that as incompetent, irrelevant, and immaterial.
The COURT: Objection sustained.
Mr. DICKINSON: State rests, except Doctor Drew's testimony.

C. N. BRUNDAGE, after being first duly sworn, testified:

By Mr. SEVERANCE:

Q. Where do you live, Mr. Brundage?
A. Minneapolis.
Q. What is your business?
A. Manager of the Hammond Packing Company, Minneapolis.

Q. The Hammond Packing Company is a corporation, is it not?
A. Yes, sir.
Q. Of what State?
A. Illinois.
Q. You are working for them on a salary, are you?
A. Yes, sir.
35 Q. What is their business—the business of the Hammond Packing Company?
A. Wholesale dealers in beef, provisions, and butter.
Q. Oleomargarine?
A. Yes, sir; I mean oleomargarine.
Q. They make oleomargarine and butter both down there, don't they?
A. Yes, sir.
Q. Mr. Brundage, I will ask you whether now and on the 22d of May the Hammond Packing Company was duly licensed by the United States Government to sell oleomargarine at its place of business in the city of Minneapolis.
A. Yes, sir——

Mr. DICKINSON: I object to that as immaterial.

Q. I will withdraw that question and ask another. I will ask you if the oleomargarine kept for sale by the Hammond Packing Company at their place of business in Minneapolis, for which you are manager, is the ordinary oleomargarine which is known and recognized as an article of commerce.
A. Yes, sir; it is.
Q. Where is that oleomargarine manufactured?
A. At Hammond, Indiana.
Q. By whom?
A. The G. H. Hammond Company——

Mr. DICKINSON: I object to that as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.

Q. That is a different corporation than the Hammond Packing Company?
A. Yes, sir.
Q. Do the Hammond Packing Company buy these packages of oleomargarine from the G. H. Hammond Company?
A. Yes, sir.
Q. I will ask you where it is put up in this ten-pound package that has been introduced in evidence.
A. At Hammond, Indiana.
Q. How was it shipped to you here—that is, was it shipped as a separate original package?

Mr. DICKINSON: Objected to as immaterial, incompetent, and irrelevant.
The COURT: Objection overruled.
36 Mr. DICKINSON: Exception.

A. Yes, sir.

Q. Had that package ever been opened prior to the time Mr. McConnell and Mr. Corbett came there and bought it?

A. No, sir.

Q. Will you state what happened when they came there?

A. Why, they came there and asked for some oleomargarine—asked me to sell them some oleomargarine. I sold it to them and then asked for their address. After they had paid for it I took their address and gave them a receipt for it.

Q. Did you open it up there?

A. At their request; yes, sir.

Q. And close it up again?

A. Yes, sir.

Q. Nothing was removed from the package?

A. No, sir.

Q. That is, they picked a block out and put it right back again?

A. They picked a block out and looked at it to see what was in the package, I suppose.

Q. That box contained ten——

A. Ten one-pound bricks.

Q. How long have you been selling oleomargarine?

A. I think about ten years.

Q. For whom?

A. For Armour and Company, Chicago, and for G. H. Hammond and Company, and for Swift and Company.

Q. They are three of the largest manufacturers of oleomargarine in the country, are they not?

A. Yes, sir.

Q. You have seen other manufacturers manufacture it, besides those companies?

A. Yes, sir.

Q. I will ask you if this oleomargarine is the same color as the oleomargarine universally sold throughout the country.

A. Yes, sir.

Q. And it has always been that color, has it?

A. Yes, sir.

Q. You sell it here in ten-pound packages, do you?

A. Yes; we sell the original packages.

Q. That is what I mean.

A. Ten-pound packages, twenty, thirty, forty, and sixty-pound packages.

Q. It is sometimes put up in these packages?

A. Yes, sir.

37 Q. And in bulk?

A. Yes, sir.

Q. How is it put up then?

A. In tubs and sometimes in rolls.

Q. You never break the package?

A. Never.

Q. You said you took the name and address of these inspectors?

A. Yes, sir.

Q. How did you come to do that?
A. The Federal Government requires us to do that.
Q. You comply with the Federal laws, do you?
A. Yes, sir.
Q. You say that this package was bought at Hammond, Indiana, and shipped directly to the Hammond Packing Company, of which you are manager here in Minneapolis?
A. Yes, sir.
Q. Did it pass through the hands of any other person—any middleman?
A. No, sir.
Q. This is the first sale of this package in this State?
A. Yes, sir.
Q. And you sold it as the representative of the Hammond Packing Company?
A. Yes, sir.
Q. And as its manager?
A. Yes, sir.

Cross-examination.

By Mr. DICKINSON:

Q. Who did you order it from, Mr. Brundage?
A. G. H. Hammond Company, of Hammond, Indiana.
Q. You ordered it from the manufacturer?
A. Yes, sir.
Q. It didn't come from the Hammond Packing Company, then?
A. No, sir.
Q. Then your company didn't ship the butter in here?
A. Our company? No, sir.
Q. The Hammond Packing Company?
A. The G. H. Hammond Company shipped it in here.
Q. You don't know anything about the manufacture of oleomargarine itself, do you?
A. No, sir.
Q. Don't know anything about the constituents or the proportion or the compound made up by the constituents?
A. No, sir.
38 Q. You don't know, then, what the color of oleomargarine would be in its natural state?
A. No; only——
Q. Except as it comes to you for sale?
A. That is all.
Q. From your experience?
A. That is all.

Redirect examination.

By Mr. SEVERANCE:

Q. Your company is an Illinois corporation and has its office in Chicago, does it?
A. Yes, sir.

Q. And that company buys these products at Hammond, Indiana, from the G. H. Hammond Company?

A. Yes, sir.

Q. And your company has places of business in other States, has it?

A. Yes, sir.

Q. And whenever any oleomargarine is shipped in it comes in as the property of your company from Hammond, Indiana?

A. Yes, sir.

Q. And is shipped on your order?

A. It is shipped on our order; yes, sir. We order it.

Q. It comes by train, by rail?

A. Yes, sir.

Recross-examination.

By Mr. DICKINSON:

Q. You order it of the G. H. Hammond people, direct to Minnesota of them, and they ship it on to you?

A. Yes, sir.

Q. They deliver it to you here?

A. Yes.

Mr. SEVERANCE: They deliver it to you at Hammond, Indiana——

Mr. DICKINSON: That is objected to.

Q. As I understand it, the G. H. Hammond Company ship
39 it here to your order for the Hammond Packing Company?

A. They deliver it free on board cars at Chicago, and we pay the freight.

Mr. SEVERANCE: Do you mean Chicago or Hammond, Indiana?

A. Hammond, Indiana, I should say.

Q. You represent the Hammond Packing Company?

A. Yes, sir.

Q. You send for the order to the G. H. Hammond people and they ship it on?

A. Yes.

Q. It arrives here on the cars?

A. Yes; we pay the freight on it; we buy it f. o. b. Hammond.

Redirect examination.

By Mr. SEVERANCE:

Q. The G. H. Hammond Company send you a bill of lading from Hammond, Indiana, as soon as it is delivered there free on board cars at Hammond, Indiana; isn't that it?

A. Yes, sir.——

Mr. DICKINSON: Objected to as leading.

Q. I will ask you whether or not you receive a bill of lading of those goods as they are shipped to you, including this package in question.

A. Yes, sir.

Q. From whom?
A. The G. H. Hammond Company.
Q. Do they send it to you by mail?
A. Yes, sir.
Q. At the time the goods are delivered on the cars there?
A. Yes, sir.
Q. The goods are consigned to you?
A. Yes, sir.
Q. You pay the freight and take up the article?
A. Yes, sir.

40 Recross-examination.

By Mr. DICKINSON:

Q. How much did they pay you for this package? Their testimony was correct on that point, was it?
A. Yes, sir; I think it was; yes, sir.

WILLIAM B. RUSSELL, after being first duly sworn, testified:

By Mr. SEVERANCE:

Q. Mr. Russell, where do you live?
A. Hammond, Indiana.
Q. What is your business?
A. Foreman of the butterine department of G. H. Hammond.
Q. How long have you occupied that position?
A. Three years last March.
Q. How long have you been connected with that company?
A. Ten years in July.
Q. What is your duties as foreman?
A. To oversee the manufacture of the butterine.
Q. Is butterine and oleomargarine the same thing?
A. Virtually the same thing.
Mr. DICKINSON: Virtually? What do you mean by that?
A. Well, I will say they are.
Mr. DICKINSON: But not as it is generally accepted. There is a little difference, isn't there?
A. Yes; there is a little difference from a chemical analysis of it.
Q. You make oleomargarine there?
A. Yes, sir.
Q. Is it made there under your direction?
A. Yes, sir.

41 Q. What are the constituent parts of oleomargarine?
A. Oleo oil, neutral lard, cottonseed oil, cream and milk, butter color, and salt.
Q. Are those the same constituents ordinarily used in the manufacture of oleomargarine?
A. Yes, sir.
Mr. DICKINSON: What is that again, please?
A. Oleo oil, neutral lard, cottonseed oil, milk and cream, butter color, and salt.

Q. What butter color do you use?
A. Wells and Richardson's.
Q. Do you know whether that is a standard article used for that purpose?
A. Yes, sir; it is.
Q. Is it used by all manufacturers of oleomargarine so far as you know?

Mr. DICKINSON: That is objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection sustained.
Exception taken by the defendant.

Q. I will ask you whether or not that is the same butter color that is used in creameries, if you know.

Mr. DICKINSON: Same objection.
The COURT: Objection sustained.
Exception taken by the defendant.

Cross-examination.

By Mr. DICKINSON:

Q. What does butter color consist of?
A. I don't know, sir.
Q. You don't know?
A. No, sir.
Q. Briefly, what is oleo oil?
42 A. Manufactured from the gall fat of the steer.
Q. And neutral lard is what?
A. Manufactured from the leaf lard of the hog.
Q. And what is the process of mixing this, compounding it into oleomargarine?

Mr. SEVERANCE: I object to this as incompetent, irrelevant, and immaterial, and not proper cross-examination.
The COURT: Objection overruled.
Exception taken by defendant.

Q. Just state the method of mixing these.
A. Why, they reduce the neutral lard oils to a certain temperature and run into a vat or churn and mix together with proper consistency.
Q. When is the cottonseed oil put in?
A. They are all——
Q. Which all?
A. Oleo oil, neutral lard, cottonseed oil, milk and cream, butter color, and salt.
Q. What is the butter color used for? What is it put into the mixture for, oleomargarine?

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.
Exception taken by defendant.

A. It is put in it to color the mixture.
Q. To make it what color?
A. To make it a yellow color.
Q. Without that what would be the color of the mixture?
A. It would be a very light straw.

Redirect examination.

By Mr. SEVERANCE:

Q. This color is uniformly put in the mixture when you put the other parts in and churn it together?
A. Yes, sir.
43 Q. Oleomargarine is this color?
A. Yes, sir.
Q. Always has been?
A. Yes, sir.
Q. It don't vary at all?
A. No.

Recross-examination.

By Mr. DICKINSON:

Q. Why do you put yellow color in?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.
The COURT: It is already testified to.

W. N. IRISH, after being first duly sworn, testified:

By Mr. SEVERANCE:

Q. Mr. Irish, where do you live?
A. St. Paul.
Q. What is your business?
A. Secretary and treasurer of the Crescent Creamery Company.
Q. How many creameries have they?
A. We own and operate twelve, I think.
Q. All in different parts of the State of Minnesota?
A. Yes, sir.
Mr. DICKINSON: Southern part?
A. Southern and southeastern.
Q. What do you manufacture?
A. Butter and cheese.
Q. How long have you been in the business?
A. Seventeen years.
Q. How long has the Crescent Creamery Company been in business?
A. The present corporation five years or more.
Q. Before that you were connected with the predecessor of it?
A. Yes, sir.
Q. Since when?
A. Since the spring of '82.

44 Q. You are familiar with the manufacture of creamery butter, are you?

A. Yes, sir.

Q. I will ask you if you are familiar with the manner of operating creameries.

A. I am.

Q. And the manufacture of butter in creameries in the State of Minnesota?

A. Yes, sir.

Q. I will ask you whether it is customary in creameries to use coloring of any kind in making creamery butter.

Mr. DICKINSON: Objected to as incompetent, irrelevant, and immaterial.

The COURT: Objection overruled.

A. It is.

Q. What colored matter is used?

A. Well, there are different makes.

Q. What is the principal one?

A. We are using at the present time Wells, Richardson and Company's.

Q. Do you use that all the year round?

A. Yes, sir.

Q. So as to make a uniform color of butter?

A. Yes, sir.

Q. I will ask you whether the color of butter does not vary at different seasons if coloring extract is not used.

A. It does; yes, sir.

Q. I will ask you whether natural butter in the winter season isn't lighter colored than this brick of oleomargarine that is introduced in evidence.

A. Take the average butter, I should say it is lighter than that in the winter.

Q. And isn't it a fact that the average June butter without coloring with extracts is a more pronounced yellow?

A. I don't know whether the average butter would be.

Q. But it differs in different seasons, does it not, the natural butter?

A. Yes, sir; at different seasons of the year it varies from
45 the different breeds of cows and the different methods of feeding.

Q. You heard the testimony of Mr. Russell, who was on the stand here?

A. Yes, sir; I did.

Q. He spoke of Wells and Richardson's coloring?

A. Yes, sir.

Q. Is that the same what you meant you were using?

A. Yes, sir; we are now using it.

Cross-examination.

By Mr. DICKINSON:

Q. You say you use it the year round. At certain months it isn't necessary to use it?

A. Well, we use it usually the year round. At certain seasons we have to use it more than other seasons.

Q. It isn't necessary to use it during June and July, August and September—about four or five months in the year—is it?

A. Yes, sir; to a certain extent it is.

Q. Are you the secretary and treasurer?

A. Yes, sir.

Q. You aren't engaged in looking after the manufacturing?

A. I am looking after the office work, of course, but I have been in the manufacturing department a great deal.

Q. At some seasons of the year you use more of this coloring than at others?

A. Yes, sir.

Q. And that is to preserve the uniform color?

A. Yes, sir.

Q. That is the uniform grade of the color of butter?

A. Yes.

Q. What is that color—about this color?

A. Yes; that is the average, I should say.

Q. When it isn't up to that uniform grade, then it isn't what is commonly used by trade—a light color would indicate an inferior grade?

A. Yes; as it is usually accpeted by trade.

Q. How much below that is the average color of butter in the off season when you have to use the most color?

A. Well, as I say, butter varies considerably.

46 Q. Now, during the winter time about how much below that color?

A. You take the average sample of butter?

Q. Yes.

A. As I say, different cows would produce different grades.

Q. I mean the average product.

A. Take the average in the winter and it would be quite a perceptible shade lighter than that.

Q. Not a white color?

A. No; of course, there are samples of butter that is almost white, but that I don't think is the rule; it is an exception.

Q. If a person buying butter on the market and it is below what you call uniform grade, it at once becomes a suspicious article or an article which requires investigation, does it not?

A. As I stated before, take the average buyer and he likes to have the butter of a good, rich, yellow color; that is, the average buyer.

Q. That is what is known as butter color, isn't it?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.

Q. What is uniform color; what is that?
A. The average color, as I say, is bright butter color.

Redirect examination.

By Mr. SEVERANCE:

Q. There are a great many different shades in the color of butter?
A. Butter in its natural state, there are a great many different shades.
Q. There are some markets you ship to where they demand different shades than others?
A. Yes, sir.
Q. So you color a good deal of your butter so it is considerably darker, more pronounced yellow, than this sample here, and some not so much as this? Isn't that so?
A. Well, I presume there are seasons—take it in the spring
47 of the year, when a sample would be a richer color than that, and other seasons not quite so much. Of course, take butter in the winter and the average buyer doesn't expect to get as nice grade of butter than in the spring and summer.
Q. Do you know the color of oleomargarine?
A. No, sir.
Q. Butter varies at different seasons of the year?
A. Yes, sir.

Recross-examination.

By Mr. DICKINSON:

Q. You said a richer color. What is that?
A. A darker yellow.
Q. The darker the butter is, the richer it is; is that right?
A. You take a rich butter——
Q. Isn't it a fact that butter that is light is not as rich butter as the dark color?
A. I wouldn't say that. I suppose it will have the same amount of butter fat in as it would if it was a darker butter.
Q. The lighter butter is poorer?
A. Not in butter fats.
Q. Take the lighter butter that is only used by farmers, and it is a poorer butter, isn't it?

Mr. SEVERANCE: I object to that.

Q. That is, it isn't used on the market?

Mr. SEVERANCE: I object to that.
The COURT: If you want to make a record, go on; but this is entirely immaterial, so far as that is concerned.
Mr. DICKINSON: Well, that is all.

48 J. L. CRUMP, after being first duly sworn, testified:

By Mr. SEVERANCE:

Q. Mr. Crump, where do you live?
A. St. Paul.
Q. What is your business?
A. Manager of F. B. Fargos and Company.
Q. What do they do?
A. Sell creamery supplies, creamery machinery.
Q. How long have you been in that business?
A. Three years.
Q. Do you handle butter color?
A. We do.
Q. Whose make?
A. Wells', Richardson's, F. B. Fargos', and Hanson and Thatcher's.
Q. I will ask you if you sell any amounts of these butter colors to any persons operating creameries throughout the State.

Mr. DICKINSON: That is objected to as incompetent, irrelevant and immaterial, and no foundation laid.
The COURT: Objection sustained.

Q. You say you have been manager of F. B. Fargos and Company?
A. Yes.
Q. Three years?
A. No; I am manager at the present time; I have been in the business three years.
Q. And that company handles creamery supplies and so forth?
A. Yes, sir.
Q. And that company sells to creamery companies, do they not?
A. Yes, sir.

Mr. SEVERANCE: I think we will rest now.

49 Mr. DICKINSON: I want to recall Mr. Russell a minute for further cross-examination:

W. B. RUSSELL.

By Mr. DICKINSON:

Q. I want to know in what proportion you use this butter color to the other ingredients in the manufacture of oleomargarine.
A. Sixteen ounces to twelve hundred pounds of oleomargarine. I haven't figured it out just to the pound, but that is the proportion.
Q. You never use more than that?
A. No, sir.
Q. And that is the material you call butter color?
A. Yes, sir; Wells and Richardson's butter color.
Q. You don't use any other color?
A. No, sir.

Q. Never have since you have been connected with it?
A. Only in experimental work.
Q. This is not a package of experimental work?
A. No, sir.
Q. Is that in fluid or dry form?
A. It is in fluid form.
Q. But you don't know what it consists of?
A. No, sir; I don't; not the analysis of it.

Redirect examination.

By Mr. SEVERANCE:

Q. This stamp is dated April 29th, 1899?
A. Yes, sir.
Q. You were foreman at that time?
A. Yes, sir.
Q. So you can state that this package in question here was colored in proportions, as you have stated, with the ingredients as you have stated?
A. Yes, sir.

Mr. DICKINSON: It is considered that this brick of oleomargarine is introduced and received in evidence.
The COURT: Yes.

50 An adjournment was here taken to 10 a. m., July 10th, 1899.

JULY 10TH, 1899.

C. W. DREW, after being first duly sworn, testified:

By Mr. DICKINSON:

Q. What is your profession, Doctor?
A. Analytical chemist.
Q. How long have you been practicing that profession?
A. A portion of my time ever since 1873 has been given to it; the last number of years practically all of my time.
Q. Here in Minneapolis?
A. I have been here in Minneapolis since '81.
Q. And before that time?
A. I was a student before that time mostly.
Q. Graduated where?
A. In the chemical department of the University of Vermont, in '77, and medical department, in 1880.
Q. And you have been practicing the profession ever since, have you?
A. I have been engaged in medical practice to some extent, in teaching to some extent, and practicing chemical work the remainder.
Q. Have you a lab-ratory here in this city?
A. I have.
Q. Have you examined the oleomargarine in question here in this case?

A. I haven't examined it at all thoroughly, because I haven't had an opportunity. I have to a slight extent.

Q. I understand you didn't make a quantitative analysis.

A. I have not.

Q. You have examined a good deal of the article, have you, from time to time?

A. I have.

Q. Have your examinations of butter been extensive at all?

51 A. Yes.

Q. Are you acquainted with the product here in Minnesota?

A. I am.

Q. I will ask you what is the color, Doctor, of butter as it appears upon the market and as an article of commerce here in this city.

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial and no foundation laid.

Mr. DICKINSON: Do you want to cross-examine him on that?

Mr. SEVERANCE: No, sir.

Q. Well, are you acquainted, Doctor—do you know what the color of butter is and has been in this city?

A. I have lived in Minnesota for eighteen years or nineteen years and eaten butter every day during that time, I think. I have also been connected with the State dairy and food department for six or eight years, and have examined butter during part of that time as to composition of properties, and so on.

Mr. SEVERANCE: I submit he is not an expert of butter any more than the rest of us. Same objection as before.

The COURT: Objection overruled.

Exception taken by defendant.

(Former question read:)

A. I should call the color a bright yellow.

Q. What is the color of oleomargarine, Doctor, in its pure state, free from any coloring or ingredient?

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial and no foundation laid.

The COURT: Objection sustained.

Q. Do you know the constituents of oleomargarine?

A. I do.

Q. You have examined a good many samples, have you?

A. I have.

Q. Do you know the color of the different ingredients composed in the article?

A. I do.

Q. I will ask you what you found in the oleomargarine which you examined in this case, what the constituents of the oleo-

52 margarine was that you examined in this case.

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial.

The COURT: Objection overruled.
Exception taken by defendant.

A. I can't say that I gave a critical examination enough to this particular sample to say much about it, any more than I should say it was oleomargarine from the character.

Q. Oleo oil and what?

A. Oleo oil with more or less neutral lard usually, commonly called, and a varying proportion of cotton-seed oil, with the mixture of a proper amount of salt, with the mixture of a varying proportion of butter derived from milk or cream, and with coloring matter.

Q. Some salt?

A. I mentioned salt. Those are the usual constituents of oleomargarine as I found it in commerce.

Q. What effect has the use of this butter color on the combination of these constituents which you have mentioned?

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial, and no foundation laid.
The COURT: Objection overruled.
Exception taken by defendant.

A. What effect would the addition of butter color, so called, have to this mixture, do you mean?

Q. No. What effect would the butter color which you found in this oleomargarine have in all the constituents?

A. It imparts color, substance.

Q. What color?

A. The yellow color.

Q. Are you able to state, Doctor, what effect sixteen ounce- of what is known as butter color would have—Wells and Richardson's butter color would have upon twelve hundred pound- of oleomargarine?

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial, and no foundation laid.
The COURT: He may answer.
Exception taken by defendant.

53 A. In my judgment, it would impart a bright yellow color to the preparation.

Q. A yellow color?

A. A bright yellow color.

Q. Are you acquainted with the article known as butter color, manufactured by Wells and Richardson?

A. I am.

Q. What is it, Doctor?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection overruled.
Exception taken by defendant.

A. The pre-aration known on the market as Wells and Richard-

son's butter color, as found upon the market at the present time, is a solution of——

Mr. SEVERANCE: I object to that, if the court please; that isn't what he was asked.

The COURT: He may answer.

Witness continuing: It is a solution of coal-tar yellow in cotton-seed oil, principally; in fact, this particular product is that invariably. The character of it used is various in these different brands of colors. The particular one mentioned conforms to my statement, I believe.

Q. Is it known by any other name?

Mr. SEVERANCE: Objected to as immaterial.

The COURT: Objection overruled.

Exception taken by the defendant.

A. The yellow employed here is commonly known as butter yellow; the identity is not always disclosed by examination.

Q. What have you found in this particular color?

A. I have identified this particular color as coal-tar yellow. I should say it is the ordinary butter yellow used by Wells and Richardson Company, a product allied to menthol orange and other analine products.

54 Q. Do you know its use, Doctor, in manufacturing and trade?

A. Of this preparation?

Q. Yes.

A. It is used as a color for butter—it is a color for butter.

Q. What, in your opinion, Doctor, I will ask you, would be the color of this oleomargarine with the butter color left out?

Mr. SEVERANCE: Objected to as incompetent, irrelevant, and immaterial, and no foundation laid.

The COURT: He may state first whether he knows or not.

WITNESS: I know what the color would be; yes, sir.

Q. Answer.

Mr. SEVERANCE: Same objection.

The COURT: The foundation is rather meagre as to his examination of oleomargarine, I think.

Q. I speak of this oleomargarine here. To what extent have you examined oleomargarine in the last year or two?

A. Only to a very limited extent during that time. I have examined a great many samples of it while connected with the State dairy and food department, however.

Q. And that covers what period of time?

A. About seven years, I think.

Q. As I understand your testimony, it is that this particular oleomargarine is same as the others you examined?

A. I should say from my examination it was the ordinary character of the product. As I said before, I had very little opportunity

to examine critically this sample. I was called out of the city the same day that I received it, and have been absent until yesterday late.

By Mr. SEVERANCE:

Q. Have you ever been in an oleomargarine factory?

A. I don't know that I have.

Q. Have you ever seen any oleomargarine samples that
55 you examined that didn't contain any coloring matter?

A. Any uncolored matter?

Q. Yes.

A. No, I have not.

Mr. DICKINSON, continuing:

Q. As I understand, you analyzed it and separated its ingredients?

A. An analysis of oleomargarine does not consist of the separation of its ingredients. It consists of the identification of them.

Q. Do you know what its constituents are—what their color is?

A. I am familiar with the color of the constituents from which oleomargarine is made. I think from that I can judge of the color which a mixture of those constituents would have.

Mr. SEVERANCE: Wouldn't that color differ somewhat as the constituents change?

A. It undoubtedly would.

Mr. SEVERANCE: I submit the objection to the former question as incompetent, irrelevant and immaterial, and no foundation laid.

The COURT: Objection overruled.

Exception taken by defendant.

Q. What would be the color of this oleomargarine in question, leaving out the butter color?

Mr. SEVERANCE: Same objection.

The COURT: Objection overruled.

Exception taken by defendant.

A. In my judgment, it would be a light yellowish color.

56 Cross-examination.

By Mr. SEVERANCE:

Q. Professor, there are very many shades of butter, are there not?

A. Butter varies in its color; yes.

Q. From almost white to a dark yellow?

A. Are you referring to butter as it is naturally or as upon the market?

Q. Well, natural butter first.

A. As butter would be prepared without the presence of coloring matter, its color would vary widely different seasons of the year and different feed given to the cattle.

Q. It would vary from almost white, almost like lard, to almost a brilliant yellow?

A. I should say it would vary from a light yellowish color to a deep yellow.

Q. There is some butter—there is butter same color as this natural oleomargarine, if I might use that expression, which you say was a light yellowish color?

A. I think there is.

Q. Most of the butter that is made in creameries is colored, is it not?

Mr. DICKINSON: Objected to as immaterial.

The COURT: Objection overruled.

A. I think almost all butter made, anyway, is colored at different seasons of the year.

Q. In both dairies and creameries?

A. Yes.

Q. And the butter coloring depends on the extent it is used at different seasons of the year?

A. I think so; at different seasons of the year.

Q. If butter is used all the year round, it would vary at different seasons of the year?

A. It would; yes.

Q. This Wells-Richardson butter color is a well-recognized article of commerce, is it not?

A. Oh, yes; it is a standard preparation, used very extensively.

Q. It is used very extensively in coloring butter?

A. Yes.

57 Redirect examination.

By Mr. DICKINSON:

Q. This use of this coloring matter in manufacturing dairy butter is used for what purpose?

Mr. SEVERANCE: That is objected to; that is self-evident.

The COURT: Yes.

Q. And to bring it up to its uniform standard color, Doctor?

Mr. SEVERANCE: I object to that, as no foundation laid; it is speculation.

The COURT: Objection sustained.

Mr. DICKINSON: State rests.

Mr. SEVERANCE: We have no further testimony, your honor.

Testimony closed.

Upon filing the within petition, it is ordered that a writ of *habeas corpus* issue, returnable August 21st, 1899, at 2 o'clock p. m., at my chambers, in Minneapolis, Minn.

WM. LOCHREN, *U. S. Judge.*

Endorsed: Filed Aug. 21, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

58 And on the same, pursuant to the order of the court, the following writ of *habeas corpus* was issued in said matter. The same was returned and filed of record herein on said day.

59 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

The President of the United States of America to Harry M. Burke, lieutenant of police, city of Minneapolis:

You are hereby commanded to have the body of C. N. Brundage, by you imprisoned and detained, as it is said, together with the time and cause of imprisonment and detention, by whatsoever name the said C. N. Brundage shall be called or charged, before Hon. William Lochren, one of the judges of the United States circuit court for the district of Minnesota, at his chamber, in the custom-house, in the city of Minneapolis, on the 21st day of August, A. D. 1899, at two o'clock p. m. of said day, to do and receive what shall then and there be determined concerning the said C. N. Brundgage.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 21st day of August, A. D. 1899. Issued at my office, in the city of Minneapolis, under the seal of said circuit court, the day and year last aforesaid.

[Circuit Court Seal.]

HENRY D. LANG, *Clerk*,
By ROBERT C. MABEY, *Deputy*.

Endorsed: Service of the within writ is admitted at Minneapolis, Minn., this 21st day of August, 1899. Harry M. Burke, lieutenant of police, city of Minneapolis. Filed Aug. 21, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

60 And on the said twenty-first day of August, A. D. 1899, the following proceedings of court were entered of record in said matter, viz:

61 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, March Term, A. D. 1899.

AUGUST 21ST, 1899.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal, by Charles A. Nimocks, deputy; Henry D. Lang, clerk, by Robert C. Mabey, deputy.

In the Matter of the Petition of C. N. BRUNDAGE for a Writ of *Habeas Corpus.*

Now comes Harry M. Burke, lieutenant of police of the city of Minneapolis, Minnesota, and produces in court the said C. N. Brundage in obedience to a writ of *habeas corpus* this day issued herein.

And the said writ having been filed, with the admission of said Harry M. Burke of service thereon, Mr. C. A. Severance appears on behalf of the petitioner and Mr. H. D. Dickinson appears on behalf of the respondent.

By consent of counsel for the respective parties, it is ordered that the said Burke have until Thursday, August 24th, 1899, to make and file *nunc pro tunc* as of this day his return to said writ, and that the hearing thereon be, and the same hereby is, set for Saturday morning, August 26, 1899, at ten o'clock.

Pursuant to the agreement of counsel for the respective parties, it is by the court ordered that the said C. N. Brundage be, and he hereby is, permitted to depart this court until Saturday morning, August 26th, 1899, at ten o'clock, without bail.

62 And on the twenty-fourth day of August, A. D. 1899, the following return was filed of record in said matter *nunc pro tunc* as of August 21st, 1899, viz:

63 In the United States Circuit Court, Eighth Judicial Circuit.

UNITED STATES OF AMERICA, }
District of Minnesota. }

To the Honorable William Lochren, judge of said court:

The return of Harry M. Burke, police officer of the city of Minneapolis, in Hennepin county, Minnesota, to a writ of *habeas corpus* granted on the petition of C. N. Brundage, directed to said Harry M. Burke, as said police officer, respectfully shows—

That pursuant to said writ he produced before your honorable court, at the time indicated in said writ, the body of said C. N. Brundage, and, as and for a return as to the day and cause of his detention of the said C. N. Brundage, admits that the affidavit and complaint set forth in the petition of said C. N. Brundage herein, a copy of which is hereto attached and marked "Exhibit A," was filed with the municipal court of the city of Minneapolis, in the county of Hennepin and State of Minnesota, on the 22d day of May, 1899, and that thereupon a warrant was duly issued out of said municipal court, and the said C. N. Brundage, petitioner herein, was arrested and brought before said municipal court and duly arraigned and tried upon the charge set out in said affidavit and complaint and the said C. N. Brundage duly convicted and adjudged guilty on the 31st day of July, 1899, of the offense charged in said affidavit and complaint in the manner and upon the proceedings described and set forth in the petition of said C. N. Brundage herein, and that on said last-named date, pursuant to said judgment of said municipal court, said C. N. Brundage was sentenced by said court to pay a fine of twenty-five dollars and three dollars costs, and in default of the payment thereof to be imprisoned in the work-
64 house in the city of Minneapolis for the term of thirty days, and that by the order of said court a stay of execution of said sentence was had, which said stay expired this day; that the

said C. N. Brundage, petitioner herein, did not pay said fine nor costs imposed upon him by said court; whereupon a writ of commitment was duly issued out of said municipal court for the said C. N. Brundage, a true copy of which said writ of commitment is hereto attached and made a part of this return and marked "Exhibit B."

The said Harry M. Burke further says that the said arrest, trial, and conviction of the said C. N. Brundage, and all the proceedings of the court therein and in this return set forth, were had pursuant to and under and by virtue of the statute of the State of Minnesota entitled "An act to prevent fraud in the sale of dairy products, their imitations or substitutes, to prohibit and prevent the manufacture and sale of unhealthy and adulterated dairy products, and to preserve the public health" (chapter 295, General Laws of State of Minnesota, 1899), which said act was approved April 19, 1899; and each and all of the allegations of the said C. N. Brundage in his petition herein for said writ of *habeas corpus* are hereby denied, except as hereinbefore admitted.

Said Harry M. Burke further says that the said C. N. Brundage has been since and during the 21st day of August, 1899, to this time, and is now, held and imprisoned and in the custody of the said Harry M. Burke, pursuant to the order and sentence of the court hereinbefore referred to and by virtue of said writ of commitment, which was duly delivered to him as a police officer.

HARRY M. BURKE,
Police Officer of the City of Minneapolis.

65 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Harry M. Burke, being duly sworn, upon oath says that he is the police officer and person making the above and foregoing return, and that the matters and things therein set forth are true in substance and effect.

HARRY M. BURKE.

Subscribed and sworn to before me this 21st day of August, A. D. 1899.

P. S. NEILSON,
[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minnesota.*

Copy.

EXHIBIT A.

Municipal Court, City of Minneapolis.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

William C. Corbett, being duly sworn, makes complaint to the above-named court and says that on the 22 day of May, A. D. 1899, at the city of Minneapolis, in said county of Hennepin, State of

Minnesota, C. N. Brundage, then and there being, did wilfully, unlawfully, and wrongfully offer and expose for sale and have in his possession, with intent to sell, a quantity of a certain compound designed to take the place of butter and made in part from animal and vegetable oils and fats not produced from milk or cream, said compound being an article commonly known as oleomargarine and being then and there colored with a coloring matter, whereby the said article and compound was made to resemble butter,
66 contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota. Wherefore complainant prays that said offender may be arrested and dealt with according to law.

WILLIAM C. CORBETT.

Sworn to and subscribed and complained of before me this 24 day of May, A. D. 1899.

[Municipal Court Seal.]

HENRY N. LOHREN,
Deputy Clerk of the Municipal Court.

Copy.

EXHIBIT B.

Municipal Court, City of Minneapolis.

STATE OF MINNESOTA, } ss.:
County of Hennepin, }

The State of Minnesota to the sheriff or any constable of said county, to the chief of police or any police officer of said city, and to the keeper of the workhouse of the city of Minneapolis:

Whereas at a term of the above-named court, held in said city of Minneapolis on the 31st day of July, 1899, C. N. Brundage was duly brought before said court and charged in writing, on the oath of William C. Corbett, and by the said court duly convicted of having on the 22nd day of May, in the year of our Lord one thousand eight hundred and ninety-nine, at the city of Minneapolis, in said county of Hennepin, willfully, unlawfully, and wrongfully offered and exposed for sale and have in his possession, with intent to sell, a quantity of a certain compound designed to take the place of butter, and made in part from animal and vegetable oils and
67 fats not produced from milk or cream, said compound being an article commonly known as oleomargarine, and being then and there colored with a coloring matter, whereby the said article and compound was made to resemble butter, contrary to the statute in such case made and provided and against the peace and dignity of the State of Minnesota, and upon conviction the said court did adjudge and determine that he should forfeit and pay a fine of twenty-five dollars and three dollars costs, and in default of the payment thereof that he be imprisoned in the workhouse of the city of Minneapolis for the term of thirty days, at hard

labor; and whereas he has not paid the said fine, nor costs, nor any part thereof:

These are therefore, in the name of the State of Minnesota, to command you, the sheriff, constable, chief of police, and police officer, and each of you, forthwith to convey and deliver the body of the said C. N. Brundage into the custody of the superintendent of the workhouse of the city of Minneapolis, and you, the keeper, are hereby commanded to receive him into your custody in the workhouse of the city of Minneapolis and him there safely keep for the term of thirty days at hard labor, unless he shall sooner pay the said fine and costs, or he be thence sooner discharged by due course of law.

Hereof fail not under penalty of the law.

Witness the Honorable Andrew Holt, municipal judge, at the city of Minneapolis, Minn., this 21st day of August, A. D. 1899.

[Municipal Court Seal.]

A. E. ALLEN,
Clerk of the Municipal Court,
By P. S. NEILSON, *Deputy.*

Endorsed: Filed August 21, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

68 And on the twenty-sixth day of August, A. D. 1899, the following proceedings of court were entered of record in said matter, viz:

69 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, March Term, A. D. 1899, August 26th, 1899.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge: William H. Grimshaw, United States marshal, by Charles A. Nimocks, deputy; Henry D. Lang, clerk, by G. F. Hitchcock, Jr., deputy.

In the Matter of the Petition of CHARLES N. BRUNDAGE for a Writ of *Habeas Corpus.*

The above-entitled matter coming on for argument upon the return to the writ of *habeas corpus* heretofore issued herein, Mr. C. A. Severance is heard on behalf of the petitioner and Mr. H. D. Dickinson is heard on behalf of the State, and, the argument thereof not being concluded at the hour of adjournment, it is by the court—

Ordered that further proceedings in said matter be, and the same hereby are, continued until Thursday morning, August 31st, 1899, at ten o'clock; and it is further—

Ordered that the said Charles N. Brundage be, and he is hereby, allowed to depart this court until Thursday morning, August 31st, 1899, at ten o'clock, without bail.

70 And on the thirty-first day of August, A. D. 1899, the following proceedings of court were entered of record in said matter, viz:

71 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, March Term, A. D. 1899, August 31st, 1899.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal, by Charles A. Nimocks, deputy; Henry D. Lang, clerk, by G. F. Hitchcock, Jr., deputy.

In the Matter of the Petition of CHARLES N. BRUNDAGE for a Writ of *Habeas Corpus*.

The above-entitled matter coming on for further argument upon the return to the writ of *habeas corpus*, the same is further argued on behalf of the petitioner by Mr. C. A. Severance and on behalf of the State by Mr. H. D. Dickinson, and, the argument thereof not being concluded at the hour of adjournment, it is by the court—

Ordered that further proceedings herein be, and the same hereby are, continued until Friday afternoon, September 8th, 1899, at two o'clock, then to be further argued or submitted on briefs, to suit the convenience of court and counsel; and it is further—

Ordered that the said Charles N. Brundage be, and he is hereby, permitted to depart this court until Friday afternoon, September 8th, 1899, at two o'clock, without bail.

72 And on the eighth day of September, A. D. 1899, the following proceedings of court were entered of record in said matter, viz:

73 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, September Term, A. D. 1899, September 8, 1899.

FRIDAY MORNING.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal; Henry D. Lang, clerk, by G. F. Hitchcock, Jr., deputy.

In the Matter of the Petition of CHARLES N. BRUNDAGE for a Writ of *Habeas Corpus*.

Pursuant to the agreement of counsel for the respective parties, it is by the court—

Ordered that the hearing upon the return to the writ of *habeas corpus* in the above-entitled matter be, and the same hereby is, continued until Thursday, September 21st, 1899, at two o'clock p. m.

74 And on the twenty-first day of September, A. D. 1899, the following proceedings of court were entered of record in said matter, viz:

75 United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes, September Term, A. D. 1899, September 21st, 1899.

THURSDAY MORNING.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal, by Charles A. Nimocks, deputy; Henry D. Lang, clerk, by G. F. Hitchcock, Jr., deputy.

In the Matter of the Petition of CHARLES N. BRUNDAGE for a Writ of *Habeas Corpus*.

The above-entitled matter again coming on to be heard upon the petition and return, the same is further argued on behalf of the said petitioner by Mr. C. A. Severance and on behalf of the State by Mr. H. D. Dickinson, duly submitted and by the court taken under advisement.

76 And on the twenty-second day of September, A. D. 1899, the following decision of the court was filed of record in said matter, viz:

77 United States Circuit Court, Eighth Judicial Circuit, District of Minnesota.

In re BRUNDAGE.

This case arises from the attempted enforcement of a statute of the State of Minnesota designed to prevent the sale or having in possession for the purpose of sale of oleomargarine colored with any coloring matter so as to resemble butter made from cream.

Section 16 of an act of the legislature of the State of Minnesota entitled "An act to prevent fraud in the sale of dairy products, their imitations or substitutes, to prohibit and prevent the manufacture or sale of unhealthy or adulterated dairy products, and to preserve the public health," approved April 19, 1899, reads as follows:

"SEC. 16. No person, by himself or his agents, or his agents or servants, shall manufacture for sale, have in his possession with intent to sell, expose or offer for sale, or sell as butter or as cheese, or as substitutes for butter or cheese, or as imitations of butter or cheese, under any name or title whatsoever, any mixture or compound, which is designed to take the place of butter or of cheese, and which is made from animal or vegetable oils or fats, or by the mixing or compounding of the same, or any mixture or compound consisting in part of butter or of cheese in mixture or combination

with animal or vegetable oils or fats, nor shall any person mix, compound with or add to milk, cream, butter or cheese any animal or vegetable oils or fats, with design or intent to make or produce any article or substance in imitation of butter or cheese, nor shall any person coat, powder or color with annatto or with any other coloring matter whatever, butterine or oleomargarine or any mixture or compound of the same, or any article or compound made wholly or in part from animal or vegetable oils or fats not produced from milk or cream, whereby the said article or compound shall be made to resemble butter or cheese, nor shall any person offer or expose for sale or sell any article, substance or compound made, manufactured or produced in violation of the provisions of this section, whether such article, substance or compound shall have been made, manufactured or produced within this State or in any other State or country; and the having in possession by any
78 person, firm or corporation of any article, substance or compound made, manufactured or produced in violation of the provisions of this section shall be considered as *prima facia* evidence of an intent to sell the same as butter or as cheese contrary to the provisions of this section."

The violation of any of the provisions of this act was made a misdemeanor, punishable by fine or imprisonment.

The petition and return shows that upon complaint made and filed in the municipal court of the city of Minneapolis the petitioner, Charles N. Brundage, was charged with having on the 22d day of May, 1899, at said city, wilfully and unlawfully offered and exposed for sale and having in his possession with intent to sell "a quantity of a certain compound designed to take the place of butter and made in part from animal and vegetable oils and fats not produced from milk or cream, said compound being an article commonly known as oleomargarine, and being then and there colored with a coloring matter, whereby the said article and compound was made to resemble butter;" whereupon a warrant was issued by said court upon which the petitioner was arrested, and upon trial was by said court convicted and sentenced to pay a fine of twenty-five dollars and three dollars costs or be imprisoned in the workhouse of said city for the term of thirty days at hard labor. As the petitioner did not pay the fine, he was taken into custody by Harry M. Burke, a police officer of said city, upon a warrant for his commitment to the said workhouse.

On the hearing it was admitted that all the testimony at said trial was correctly set forth in Exhibit A attached to said petition. From this testimony it appears, in brief, that the petitioner was and is the manager of the business at Minneapolis of the Hammond Packing Company, an Illinois corporation, dealing in wholesale in beef and provisions, including oleomargarine, and that on May 22d, 1899, William C. Corbett, an inspector of the State dairy and
79 food department of the State of Minnesota, asked for and purchased from the petitioner, at the place of business of said Hammond Packing Company, a ten-pound package of oleomargarine for the sum of $1.40 paid by him therefor.

The said 10-lb. package was an original package of oleomargarine manufactured by the G. H. Hammond Company, of Hammond, in the State of Indiana, the enclosure of the package being a wooden box, having thereon the revenue stamps and marks required by law, and upon the sale thereof at said Hammond was thence consigned by railroad by the said manufacturer to the purchaser, the Hammond Packing Company, at Minneapolis, where it was received by the said purchaser and sold entire in the same package to said William C. Corbett, who thereafter made in said municipal court the said complaint upon which said petitioner was prosecuted, as aforesaid. The oleomargarine so sold was the well-known article of food and of commerce of that name, entirely wholesome and fit for consumption as human food, and colored with the ordinary wholesome ingredients used in the manufacture of that article to impart to it the color of the best dairy butter. On such sale it was represented and sold as oleomargarine, which was the article asked for by the purchaser.

Oleomargarine has for some years in States like Minnesota, having large dairy interests, been the subject of hostile legislation, because it comes in competition with and is a substitute for butter, and, supplying its place at less cost, diminishes the price of that article and the profits of the dairymen, and also because of the facility with which it can by dishonest dealers at retail and keepers of inns and boarding-houses be put off as butter upon customers and patrons who desire only butter and would not knowingly use oleomargarine.

In the earlier cases in which the validity of this legislation was questioned it was sustained by the courts. It could not rest
80 on the admitted right of every State as matter of police regulation to provide for the inspection of articles of food put upon its markets and for the confiscation or destruction of such articles as were found to be deleterious or unwholesome, because the legislation referred to, of which the section above quoted of the Minnesota statute is a sample, provides for no inspection and aims to prohibit and exclude from the markets of the State an article of food presumably wholesome and fit for human consumption simply because of the fact that as customarily prepared and colored to make it attractive and marketable it is made to resemble perfectly another article of food, for which it is a substitute, and is thus liable to be mistaken for that article and to be fraudulently imposed upon consumers as that article.

In People *v.* Arensberg, 105 N. Y., 123, it was held that assuming oleomargarine to be as wholesome, nutritious, and suitable for food as dairy butter, and, in fact, the same article except as regards its origin, and that it is cheaper, yet to protect the people from deception the legislature could prohibit the sale or keeping or offering for sale of oleomargarine, to which in its manufacture a coloring matter not injurious to health had been added to make it resemble the best dairy butter. It was intimated that the legislature had the power to prohibit the like coloring of winter butter to make it resemble summer butter; and the then mooted question whether, in

case the essential ingredients of oleomargarine should produce an article identical in color and appearance with dairy butter, the legislature could require that a different color be given to oleomargarine to distinguish it from butter, was stated, but not passed upon.

Plumley *vs.* Massachusetts, 155 U. S., 461, was in all essentials like the present case. The statute of Massachusetts, under
81 which Plumley was convicted, prohibited the sale, offering, or exposing for sale, or having in possession with intent to sell any article, product, or compound made wholly or partly out of any fat, oil, or oleoginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream, with a proviso that nothing in the act should be construed to prohibit the sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter.

Plumley was the Boston agent of an Illinois firm engaged in the manufacture of oleomargarine at Chicago, and in shipping the same for sale to various towns and cities of that and other States, and there selling the same; and Plumley was convicted by the municipal court of Boston for selling one original 10-lb. package of oleomargarine shipped to him by the manufacturers, it being admitted that the article was wholesome, nutritious, and palatable, and that the acts of Congress had been complied with as to marks, words, and stamps on the package. Being taken upon writ of commitment to jail after such conviction and failure to pay the fine imposed, Plumley sued out a writ of *habeas corpus* from the supreme judicial court of Massachusetts, on the ground that he was restrained of his liberty in violation of the Constitution of the United States, claiming that the Massachusetts statute was repugnant to the clause of the Constitution providing that Congress shall have power to regulate commerce among the several States, and setting up all the grounds of invalidity which are here urged against the Minnesota statute. The supreme judicial court held that the Massachusettts statute was not in violation of the Constitution or laws of the United States, and remanded
82 the prisoner, who took the case by writ of error to the Supreme Court of the United States. That court held that the Massachusetts statute in its application to sales of oleomargarine artificially colored so as to cause it to look like yellow butter and brought into Massachusetts was not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the several States, and that a State has the power to prevent the sale of articles of food manufactured in and brought from another State, being subjects of sale and commerce, if their sale may cheat the people into purchasing something they do not intend to buy and which are wholly different from what their condition and appearance import. Among the cases cited in the opinion of the court, with apparent approval, are State *vs.* Marshall, 64 N. H., 549, and Weideman *vs.* State, 56 N. W. Rep.

(Minnesota), 688, which is the same case reported at State *ex rel.* Horgan, 55 Minn., 183. In each of these two cases the court had sustained the validity of State statutes forbidding the sale, or having in possession with intent to sell, of any article or compound made in imitation of butter or as a substitute for butter and not wholly made from milk or cream, and that is of any other color than pink.

Three of the justices of the Supreme Court, including the Chief Justice, dissented from the decision of the court in the Plumley case denying that a State may exclude from commerce legitimate subjects of commercial dealings because of the possibility that their appearance may deceive purchasers in regard to their qualities; but the decision of the court seemed to settle the law on the subject, and when the question of the validity of the Minnesota act of 1891—Laws of 1891, ch. 11—which in its effect forbade the sale of oleomargarine unless colored bright pink, being the identical statute which had been held valid by the Minnesota supreme
83 court in 55 Minn., 183; 56 N. W. Rep., 688, came before me in Armour Packing Co. *vs.* Snyder, 84 Fed., 136, I regarded the tenor of the Plumley decision and its apparent approval of the Minnesota and New Hampshire decisions just referred to as conclusive authority in support of the validity of the Minnesota act of 1891.

Since then the whole subject has again been considered and passed upon by the Supreme Court of the United States in Schollenberger *vs.* Pennsylvania, 171 U. S., 1, and Collins *vs.* New Hampshire, 171 U. S., 30. In the Schollenberger case it is held that oleomargarine has been recognized for nearly a quarter of a century in Europe and the United States as an article of food and commerce, and has been so recognized by acts of Congress; and being thus a lawful article of commerce, it cannot be wholly excluded from importation into a State from another State where it was manufactured, although the State into which it is introduced may so regulate the introduction as to insure purity, and that, as an incident to the right to import, the importer may personally or by his agent sell the imported article in the original packages either to dealers or consumers, and that the statute of Pennsylvania of May 21, 1885, enacting that "no person, firm or corporate body shall manufacture out of any oleaginous substance, or any compound of the same, other than that produced from unadulterated milk or cream from the same, any article designed to take the place of butter or of cheese produced from pure unadulterated milk or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale, or have in his, her or their possession, with intent to sell the same, as an article of food," and making such act a misdemeanor is invalid to the extent that it prohibits the introduction of oleomargarine from another State and its sale in the original package. As a fact of the first importance in determining that the manufacture of oleomargarine is a lawful pursuit, and the
84 manufactured article a legitimate subject of commerce, the court refers to the act of August 2, 1886, 24 Stat., 209, "An

act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of oleomargarine," which levies special taxes upon manufacturers and dealers in that article, and directs the kinds and sizes of the packages and the marks, brands, and stamps to be placed thereon, and that sales thereof shall only be made in and from such original stamped packages, and for surveillance by officers of the Government over the manufacture of the article and its forfeiture if found to contain ingredients deleterious to the public health. One description of oleomargarine contained in this act includes "all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, vegetable-oil annotto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter."

The decision of the court in the Schollenberger case certainly goes to the extent of holding that the manufacture of oleomargarine, by the compounding of the ingredients named in this quotation from the act of August 2, 1886, is recognized by Congress as being a lawful business, and that the oleomargarine so produced is a lawful article of commerce. It follows, and is distinctly held in that case, that any act of a State legislature assuming to prohibit the importation into the State and sale there by the importers of such article in original packages is invalid, being inconsistent with the exclusive power of Congress over the subject of commerce among the several States.

Comparing sec. 16 of the Minnesota act of April 19, 1899, under which the petitioner is prosecuted, with the above quotation from the act of Congress of August 2, 1886, it is obvious that the
85 Minnesota act, by its terms, prohibits and attempts to exclude from the State oleomargarine compounded of the very materials, including coloring matters, which are described in said act of Congress as constituting lawful oleomargarine of commerce, "made in imitation or semblance of butter."

According to the decisions of the Supreme Court in the Schollenberger and Collins cases, the Minnesota act is to this extent invalid, and as the conviction and imprisonment of the petitioner rest solely upon this invalid portion of that act, the conviction was null and the imprisonment was unlawful.

The argument that oleomargarine colored to resemble butter is adulterated by such coloring, so that it may for that cause be excluded from the markets of the State under its unquestioned power to exclude any article of food which is unwholesome or deleterious, fails because there is no pretense that the coloring matter contained in the oleomargarine sold by the petitioner was unwholesome, or that the oleomargarine so colored and sold was different from the "pure oleomargarine" mentioned in the opinions of the Supreme Court referred to. 'Pure, not as containing no mixture, because oleomargarine is a compound of many ingredients, but pure in the sense of containing nothing debasing or of a character which would render the article less wholesome, valuable, or desirable.

The doctrine which has apparent support in the Plumley case, that a State may exclude from its markets and absolutely prohibit

the sale of an admittedly wholesome article of food merely because it is designedly prepared to resemble so closely another more generally desired article for which it is a substitute that persons may be easily deceived and have it imposed upon them for the other article, is plainly contrary to the holding in the Schollenberger case, and untenable since that decision, in which the court announces that "the legislative policy does not extend so far as
86 to embrace the right to absolutely prohibit the introduction within the limits of the State of an article like oleomargarine, properly and honestly manufactured."

As to whether in a case like this the court should discharge the prisoner on *habeas corpus*, or by remanding him leave him to the remedy of a writ of error, it is hardly necessary to refer to the very numerous authorities. If the imprisonment is upon regular process of a court having jurisdiction and the prosecution is had under a valid law, alleged errors cannot usually be considered upon *habeas corpus;* but if the court issuing the process under which the prisoner is imprisoned had no jurisdiction or if the prosecution is under an unconstitutional and invalid statute, the circuit court has jurisdiction to discharge the petitioner on *habeas corpus*. Even then for reasons of comity such power will seldom be exercised by the circuit court to discharge a petitioner held under process from a State court, even after conviction by the trial court, unless large interests affecting the business of many or the rights of the public are so involved that serious consequences will follow from the delay which will be caused by the prosecution of a writ of error to final decision, or unless the question has already been decided by the Supreme Court of the United States, whose decision the State court has disregarded in the proceeding.

State statutes prohibiting the importation from other States and sale of articles of commerce, especially articles of food or adapted for general use, are regarded as affecting general interests and the rights of the public; and *habeas corpus* has frequently been resorted to in cases of imprisonment for violation of such statutes. Minnesota *vs.* Barber, 136 U. S., 313; Plumley *vs.* Massachusetts, 155 U. S., 461; State *vs.* McGregor, 76 Fed., 956.

87 & 88 As this is a case of that character, and as the unconstitutionality of statutes in effect like the Minnesota statute under consideration has been adjudged by the Supreme Court of the United States in the latest cases in that court upon the subject, the petitioner will be discharged from the imprisonment complained of.

Sept. 21, 1899.

WM. LOCHREN, *Judge.*

Endorsed: Filed Sept. 22, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

89 And on the same day the following judgment was entered of record in said matter, viz:

90 United States Circuit Court for the District of Minnesota
Fourth Division.

Term Minutes, September Term, A. D. 1899, September 22, 1899.

SATURDAY MORNING.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal, by Charles A. Nimocks deputy; Henry D. Lang, clerk, by G. F. Hitchcock, Jr., deputy.

United States Circuit Court, District of Minnesota, Fourth Division

In re C. N. BRUNDAGE.

The above-entitled cause came on before the court upon a writ of *habeas corpus* issued by this court, based upon a petition by C. N. Brundage, representing and stating that he was unlawfully held in custody under a commitment issued by the municipal court of the city of Minneapolis, upon a judgment convicting him of having offered and exposed for sale, and having in his possession with intent to sell, a quantity of a certain compound designed to take the place of butter, and made in part from animal and vegetable oils and fats, not produced from milk or cream, said compound being the article commonly known as oleomargarine, and being then and there colored with a coloring matter whereby the said article and compound was made to resemble butter, said prosecution having been based upon the provisions of chapter 295
91 of the Laws of the State of Minnesota for the year 1899 which said law petitioner claimed was as to him void and in conflict with the Constitution of the United States.

The court duly considered the said matter, H. D. Dickinson, Esq. assistant city attorney, having appeared for the respondent, and C. A. Severance, Esq., having appeared for the petitioner.

Now, therefore, after hearing counsel and duly considering said matter, it is considered by this court that the imprisonment of said C. N. Brundage, under said writ issued out of the municipal court of the city of Minneapolis, State of Minnesota, is without authority of law and in violation of the Constitution of the United States and that the said C. N. Brundage is entitled to have his liberty; whereupon it is hereby—

Ordered that the said C. N. Brundage be, and he is hereby, discharged from said imprisonment; it being further—

Ordered, however, that the execution of this order be stayed for a period of thirty (30) days from this date, during which time said C. N. Brundage shall be allowed his liberty upon his own recognizance, as during the said hearing.

September 22nd, 1899.

WM. LOCHREN, *Judge.*

92 *Assignments of Error.*

United States Circuit Court, District of Minnesota, Fourth Division.

In the Matter of the Petition of C. N. BRUNDAGE for a Writ of *Habeas Corpus.*

Now comes the State of Minnesota, by W. B. Douglas, attorney general, and, in its appeal to the Supreme Court of the United States from the judgment in the above-entitled proceedings, assigns the following errors:

First. The court erred in discharging the prisoner on the ground that his restraint and imprisonment was unauthorized and illegal, for the reason that chap. 295 of the Laws of the State of Minnesota for the year 1899, being an act entitled "An act to prevent fraud in the sale of dairy products, their imitations or substitutes, and to prohibit and prevent the manufacture or sale of unhealthy or adulterated dairy products, and to preserve the public health," approved April 19th, A. D. 1899, is unconstitutional and void because it is in conflict with the Constitution of the United States.

Second. The court erred in holding that said act is unconstitutional and void because it is in conflict with and in violation of art. 1, sec. 8, of the Constitution of the United States, which provides that "the Congress shall have power to regulate commerce among the several States."

Third. The court erred in holding that said act of the legislature of the State of Minnesota is a violation of and in conflict with sec. 2 of art. 4 of the Constitution of the United States, which provides that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

93 Fourth. The court erred in holding that said act of the legislature of the State of Minnesota is in violation of and in conflict with sec. 1 of art. 14 of the Constitution of the United States, which provides that "no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the full protection of the laws."

Fifth. The court erred in discharging the prisoner upon the ground that said act of the State of Minnesota was not a valid and constitutional exercise of the public powers of the State.

Sixth. The court erred in refusing to sustain the said act as valid and constitutional, and in discharging the prisoner from imprisonment for a violation thereof.

Seventh. The court erred in holding that said act of the legislature of the State of Minnesota is void, and that the said municipal court was without jurisdiction of the cause aforesaid.

Eighth. The court erred in granting said writ of *habeas corpus.*

Ninth. The court erred in refusing to dismiss and discharge said writ of *habeas corpus.*

Wherefore the said State of Minnesota prays that the order and judgment of said circuit court of the United States in and for said

district made and entered in said cause on the 22d day of September, A. D. 1899, be reversed, and that the said C. N. Brundage be remanded to the custody of the said Harry M. Burke, then and there to await what shall befall him in the execution of the sentence authorized by said act and the laws of the State of Minnesota.

W. B. DOUGLAS,
Attorney General for the State of Minnesota.

Endorsed: Filed Oct. 16, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

94 *Petition.*

United States Circuit Court, District of Minnesota, Fourth Division.

In the Matter of the Petition of C. N. BRUNDAGE for a Writ of *Habeas Corpus.*

To the Supreme Court of the United States and to the circuit court for the district of Minnesota, fourth division, and to the judges thereof:

The petition of the attorney general of the State of Minnesota for and on behalf of said State respectfully represents that at a regular term of the United States circuit court for the district of Minnesota begun and holden at the city of Minneapolis, in said district, on the 5th day of September, A. D. 1899, a final judgment was made by said court and entered therein at said term, and on the 22d day of September, A. D. 1899, in favor of the above-named C. N. Brundage, discharging the said Brundage upon a writ of *habeas corpus* from an imprisonment after conviction duly found by the municipal court of the city of Minneapolis, Minnesota, on the ground that chapter 295 of the Laws of the State of Minnesota for the Year 1899, entitled "An act to prevent fraud in the sale of dairy products, their imitations or substitutes, to prohibit and prevent the manufacture or sale of unhealthy or adulterated dairy products, and to preserve the public health," approved April 19th, A. D. 1899, under which said conviction was had, is unconstitutional and void; and your petitioner says that the said State of Minnesota, feeling itself aggrieved by said judgment, and being advised that manifest error appears in the proceedings and judgment in said circuit court, to the great damage of said State of Minnesota:

Now, therefore, your petitioner prays and petitions the
95 court for an order allowing the said State of Minnesota to prosecute an appeal in the above-entitled matter to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, in order that the said judgment of the said circuit court made be reviewed by the said Supreme Court of the United States, and the errors, if any be found therein, may be corrected, to the end that said judgment may be reversed, the constitutionality of the said act of the

legislature of the State of Minnesota sustained, and the said writ of *habeas corpus* discharged, and that the said Brundage be remanded to the proper authorities of the said State of Minnesota to be dealt with according to law.

And your petitioner will ever pray.

W. B. DOUGLAS,
Attorney General for the State of Minnesota.

Endorsed: Filed Oct. 16, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

96 *Order.*

United States Circuit Court, District of Minnesota, Fourth Division.

In the Matter of the Petition of C. N. BRUNDAGE for a Writ of *Habeas Corpus.*

Upon reading the petition of W. B. Douglas, attorney general of the State of Minnesota, for the allowance of an appeal on behalf of said State of Minnesota in the above-entitled matter, and after due consideration of the same—

It is ordered that the said State of Minnesota be, and hereby is, allowed an appeal in the above-entitled matter from the judgment entered therein in the above-named court on the 22nd day of Sept., A. D. 1899; and it is further—

Ordered that the clerk of the above-named court transmit forthwith to the Supreme Court of the United States a transcript of the petition of C. N. Brundage for a writ of *habeas corpus*, the writ of *habeas corpus* issued thereupon, the return thereto of the police officer, Harry M. Burke; the order and final judgment of the court thereupon, together with all other papers, entries, or orders on file in this office or appearing in the minutes in said proceedings; and it is further—

Ordered that pending the said appeal the said C. N. Brundage be allowed his liberty upon his personal recognizance, as heretofore, and that proceedings under the judgment herein appealed from be, and hereby are, stayed.

Done at the general term of the above-named court this 16th day of October, A. D. 1899.

WM. LOCHREN, *Judge.*

Endorsed: Filed Oct. 16, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

97 *Bond.*

United States Circuit Court, District of Minnesota, Fourth Division.

In the Matter of the Petition of C. N. BRUNDAGE for a Writ of *Habeas Corpus.*

Know all men by these presents that we, W. B. Douglas, attorney general of the State of Minnesota, on behalf of said State, as princi-

pal, and W. J. Donahower and L. A. Rosing, as sureties, all of the county of Ramsey and State of Minnesota, are held and firmly bound unto C. N. Brundage in the sum of five hundred dollars ($500); to the payment of which, well and truly to be made to said Brundage, his executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this 11th day of October, A. D. 1899.

The condition of this obligation is such that—

Whereas the above-named State of Minnesota hath appealed from the order and judgment of the circuit court of the United States for the district of Minnesota heretofore made in these proceedings, discharging on a writ of *habeas corpus* said C. N. Brundage from imprisonment:

Now, therefore, the condition of this obligation is such that if the above-named The State of Minnesota shall prosecute its said appeal to effect and shall answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to be in full force and effect.

W. B. DOUGLAS, [SEAL.]
Attorney General of Minnesota.
W. J. DONAHOWER. [SEAL.]
L. A. ROSING. [SEAL.]

In presence of—
C. W. SOMERBY.
L. E. HATCH.

38 UNITED STATES OF AMERICA, *District of Minnesota,* } ss:

STATE OF MINNESOTA, *County of Ramsey,* } ss:

W. J. Donahower and L. A. Rosing, being duly sworn each for himself, doth depose and say that he is one of the sureties named in and who signed the foregoing bond, and that he is worth the sum of five hundred dollars ($500) over and above all his just debts and liabilities and exclusive of his property exempt from execution.

W. J. DONAHOWER.
L. A. ROSING.

Subscribed and sworn to before me this 11th day of October, A. D. 1899.

EUGENE RICE,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

UNITED STATES OF AMERICA, *District of Minnesota,* } ss:

STATE OF MINNESOTA, *County of Ramsey,* } ss:

W. B. Douglas and W. J. Donahower and L. A. Rosing before me personally appeared on this 11th day of October, A. D. 1899, to me

well known to be the same persons described in and who executed the foregoing bond, and did each for himself duly acknowledge that he executed the same as his free act and deed.

EUGENE RICE,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

99 I approve the above bond and the sufficiency of the sureties thereto.

WM. LOCHREN, *Judge.*

Dated October 16th, A. D. 1899.

Endorsed: Filed Oct. 16, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

100 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. N. Brundage, and to Davis, Kellogg & Severance, his attorneys, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Minnesota, fourth division, in the matter of the petition of C. N. Brundage for a writ of *habeas corpus*, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 16th day of October, A. D. 1899, and of the Independence of the United States the one hundred and twenty-third.

WM. LOCHREN, *Judge.*

Service of this within citation and receipt of a copy thereof admitted this 19th day of October, A. D. 1899.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for C. N. Brundage.

101 [Endorsed:] Ent. 451, crim. U. S. circuit court, district of Minnesota, fourth division. In the matter of the petition of C. N. Brundage for a writ of *habeas corpus*. Citation. Filed Oct. 23, 1899. Henry D. Lang, clerk, by Robert C. Mabey, deputy.

102 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Fourth Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 102 pages, numbered consecutively from *a* to 101, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment, and all

other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Dist. of Minnesota, Fourth Division.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Minneapolis, in the district of Minnesota, this 14th day of November, A. D. 1899.

HENRY D. LANG, *Clerk*,
By ROBERT C. MABEY, *Deputy*.

[10-cent U. S. internal-revenue stamp canceled Nov. 14, 1899. R. C. M.]

[Endorsed:] United States circuit court, district of Minnesota, fourth division. In the matter of the petition of C. N. Brundage for a writ of *habeas corpus*. Return to Supreme Court.

Endorsed on cover: File No., 17,571. Minnesota C. C. U. S. Term No., 159. The State of Minnesota, appellant, *vs.* C. N. Brundage. Filed November 23d, 1899.